

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION

4 IN RE:

5 GARLOCK SEALING TECHNOLOGIES, No. 10-BK-31607
6 LLC, et al,
Debtors.

VOLUME XV
(FULL DAY)
7 FRIDAY, AUGUST 9, 2013

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9 TRANSCRIPT OF ESTIMATION TRIAL
10 BEFORE THE HONORABLE GEORGE R. HODGES,
UNITED STATES BANKRUPTCY JUDGE

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12
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Francine Rabinovitz.....				4145
James Heckman.....	4225			4261

E X H I B I T S

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1 P R O C E E D I N G S

2 (On the record at 9:03 a.m.)

3 THE COURT: Have a seat and let's get started.

4 MR. CLODFELTER: Your Honor, if I may address a
5 scheduling matter for the day. Based on discussions
6 among the parties, and as everyone has sort of discussed
7 before the trial had commenced, we have one witness,
8 Dr. Heckman that we will offer today. He's only
9 available today. We've agreed that we'll reserve the
10 last two hours today for his direct and cross-
11 examination. So I think we're all in agreement on that
12 subject and that what we're seeing this morning with the
13 continuation of Dr. Peterson's testimony.

14 THE COURT: Okay. And we can -- anyway, if we can
15 get out of here early, great. If we can't, we can stay.
16 We really can't stay much past 5:30, but we can stay
17 until then.

18 MR. GUY: Your Honor, one thing that we would like
19 clarity on, if we can get it, is the issue of the
20 additional second day and, if we are going to have the
21 additional second day, who the debtors intend to put on
22 Monday. The reason why that's relevant, Your Honor, is
23 that the debtors, I think, have six rebuttal witnesses.
24 And if they're going to put science witnesses on Monday,
25 then we can let Dr. Rabinovitz leave because she would be

1 coming back the following second.

2 THE COURT: How about if we, by lunchtime, get our
3 roster, batting order, what you're planning on doing with
4 two more days.

5 MR. CASSADA: I believe we can do that, Your
6 Honor.

7 THE COURT: And that should -- I mean, those days
8 should include, I guess, 50 percent of the time for
9 direct and 50 percent of the time for cross. Okay?

10 MR. GUY: Your Honor, I believe it would be fair
11 for us to have some time for the surrebuttal on that, but
12 we can figure that out.

13 MR. FINCH: Your Honor, the only thing about the
14 50-50 is, I understand what they're likely to do is put
15 up a witness for 15 minutes and offer their report for
16 *Daubert* purposes. We have to be -- we ought to be
17 entitled to cross-examine them for however long it takes
18 to do a full cross-examination. You've seen Mr. Frost
19 and I cross-examine people; we are efficient and fast.
20 But 15 minutes to deal with an Elizabeth Anderson is not
21 enough time.

22 THE COURT: Let's get the list at lunchtime and
23 then see. We can talk witness by witness about what to
24 do. I agree with you that that can be a problem.

25 MR. FINCH: Thank you, Your Honor.

Cross - Peterson

1 THE COURT: I guess evidence is kind of like air.
2 It will expand and fill up what space that's available.
3 That's largely because it is hot air. I don't know how
4 much more is really going to be helpful, so let's not try
5 to cram a whole lot in. I'd rather you be -- I think it
6 would be more effective for you to be a bit more surgical
7 about what you do with rebuttals. Okay? Let's --
8 speaking of surgical, let's see what we can do this
9 morning. Okay?

10 MR. CASSADA: Okay.

11 CONTINUING CROSS-EXAMINATION

12 BY MR. CASSADA:

13 Q. Good Morning, Dr. Peterson.

14 A. Good morning, Mr. Cassada.

15 Q. Going back to your qualifications. You're not an
16 economist or an econometrician, are you?

17 A. Neither.

18 Q. Okay. And you're not a statistician, are you?

19 A. I have some training in it, but I'm not a
20 statistician. Certainly not.

21 Q. You don't claim yourself as an a statistician, nor
22 have you offered yourself as an expert.

23 A. No, I'm not. My partner, Dan Relles, is a Ph.D
24 statistician, and my partner James Dertouzos, is an
25 economist.

Cross - Peterson

1 Q. You call what you do and the methodology you
2 follow, you call that science. Is that correct?

3 A. Yes. There's certainly a science to what I do.

4 Q. There is -- it is science?

5 A. Yes.

6 Q. Is that what you're saying?

7 A. Yes.

8 Q. Would you describe what scientific disciplines
9 you're applying?

10 A. There's a science of behavioral science of the law
11 it's called. Law and society is a group that does it.
12 There are publications. There are programs in that at
13 major universities, major law schools. It's been a
14 discipline that's existed for a long time. It's not a
15 branch of its own. It's really the conjunction of
16 science, social science, research and law behavioral
17 science research and law.

18 Q. So your education is -- I know you're -- you have
19 a JD?

20 A. Yes.

21 Q. But your education is in social psychology?

22 A. My Ph.D is in experimental social psychology.
23 Yes.

24 Q. Is that essentially what you're doing when you
25 estimate future claims?

Cross - Peterson

1 A. Well, that -- social psychology has a domain of
2 interests of the kinds of phenomena that it looks at. It
3 uses a scientific method. It tends to be an experimental
4 science because people try and -- you get more control
5 than scientific research in that line. But my career has
6 been at the RAND Corporation and then in my consulting
7 work. And my work at RAND is applied policy research
8 using scientific and empirical methods, and that's been
9 -- I've spent 25 years as a senior researcher at RAND
10 applying scientific, behavioral science, and empirical
11 methods to study law, and primarily the civil justice
12 system.

13 And as you know, I've published very -- a lot of
14 -- very many scholarly papers in that area. And all of
15 it uses scientific and empirical methods. And that's --
16 my Ph.D is in a scientific area. And it was a program
17 that, really, I developed myself for myself to apply
18 scientific methods to study legal matters.

19 Q. And you agree that your work here in this case
20 should be judged by the standards of science.

21 A. Among others. It should be -- I think it should
22 be judged for its credibility and the knowledge and basis
23 for -- upon which my testimony is based. That's for the
24 Court to determine.

25 Q. Okay. Now you've been in the courtroom several

Cross - Peterson

1 days. You've heard that there's a lot of testimony about
2 the bankruptcy wave.

3 A. I've heard -- yes, I've heard testimony. I don't
4 know that I've heard it in court. I've certainly read
5 about it. I understand that.

6 Q. And the bankruptcy wave, that's a term that you've
7 used before, isn't it?

8 A. I probably have.

9 Q. To describe the bankruptcies that took place in
10 2000 and 2001 of top tier defendants.

11 A. There were a lot of bankruptcies in 2000 and 2001.
12 There were more top tier defendants going into
13 bankruptcy, if I understand your use of the term, in the
14 1990s than there were -- around 1990 than there were at
15 this time. But there were a lot of bankruptcies. And it
16 had a disruption to the asbestos litigation, as I
17 testified yesterday. It was one of very many things that
18 went on. It wasn't the sole thing. I don't know if it
19 was even the major thing.

20 Q. Okay. But, in any event, we've got companies in
21 red here; we've referred to them as the "top tier
22 defendants," but they were certainly major defendants of
23 their day. You would agree with that, wouldn't you?

24 A. How do you define "major?"

25 Q. Well they were paying a large share, perhaps even

Cross - Peterson

1 most of the compensation in the tort system when they
2 filed for bankruptcy.

3 A. I may have said that earlier before I had the data
4 because I understood the visibility of those companies,
5 but I presented evidence yesterday that that was not
6 true.

7 Q. Okay.

8 A. In fact, some of them were paying a lot of money,
9 Owens Corning certainly. But most of the other companies
10 in red were paying only a little bit more than Garlock
11 was paying, and I would not have regarded Garlock as a
12 top tier defendant at that or any time.

13 Q. Okay. But then those bankruptcies precipitated a
14 bunch -- a rash of bankruptcies after that.

15 A. It set off a chain. I think that and the other
16 things going on. You can't just look at these in
17 isolation. This is a complex system. There are lots of
18 things going on; all those interact. Those companies
19 went into bankruptcies for reasons. And the reasons were
20 -- at this point in time. And the reasons, in part, were
21 -- there was a chain reaction, I'll give you that, but
22 there were also other matters that precipitated this
23 happening.

24 Q. And you were the claims expert for the asbestos
25 committee in most of the cases of the top tier

Cross - Peterson

1 defendants, were you not?

2 A. Yes.

3 Q. And for many of these other defendants that
4 followed?

5 A. I'm sorry. The companies in red. Yes. I
6 understand.

7 Q. Right. And for many of the companies that filed
8 for bankruptcy thereafter, you were in those bankruptcy
9 cases as well, many of them.

10 A. Some of them. I recognize some names there. Yes.

11 Q. And you estimated the asbestos liabilities, under
12 the way you define that, for many of these companies.

13 A. Yes.

14 Q. Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 BY MR. CASSADA:

17 Q. Dr. Peterson, I've handed you 12 documents. Would
18 you, by exhibit number in the lower right-hand corner,
19 identify each of those documents? Excuse me, the lower
20 left-hand corner. First, let us know whether you
21 recognize these as estimation reports that you rendered
22 or -- and/or estimation opinions in the cases that are
23 enumerated on each of the reports.

24 A. The first, Exhibit 4, is my expert report of the
25 ASARCO, A-S-A-R-C-O.

Cross - Peterson

1 Q. We want to use the numbers in the lower left.

2 A. I'm sorry. That's GST-6571. Do you want me to
3 read the title, or is the identification sufficient?

4 Q. Is this -- this is your report on the Projected
5 Liabilities For Asbestos Personal Injury Claims Against
6 ASARCO?

7 A. Yes.

8 Q. Okay. If you would identify each in that manner.

9 A. I'll read the title. Yes.

10 Q. Okay.

11 A. I was aspiring to brevity. The 6572 is
12 Preliminary Expert Report On W.R. Grace Trust, Mark A.
13 Peterson, Legal Analysis Systems, March 2009. The ASARCO
14 report was dated May 2007.

15 Exhibit GST-6573 is labeled Exhibit A on the first
16 page. And the second page it is W.R. Grace Projected
17 Liabilities For Asbestos Personal Injury Claims As Of
18 April 2001, Mark A. Peterson, Legal Analysis Systems,
19 June 2007.

20 Exhibit GST-6574 is -- Exhibit 2 is on the first
21 page. The second page, the title is W.R. Grace Projected
22 Liabilities For Asbestos Personal Injury Claims As Of
23 April 2001, Mark A. Peterson, Legal Analysis System, June
24 2007 (Revised January 2009).

25 Exhibit GST-6573 -- excuse me. Let me reread

Cross - Peterson

1 that. GST-6575. And Exhibit 2 on the first page. The
2 title page is USG Corporation Projected Liabilities For
3 Asbestos Personal Injury Claims As Of June 2001, Mark A.
4 Peterson, Legal Analysis Systems, May 2006.

5 Exhibit 4, GST-6576 is the exhibit. It says
6 Exhibit 4 on the first page. The title page says
7 Projected Liabilities For USG Asbestos Personal Injury
8 Claims As Of June 25, 2001, Mark A. Peterson, Legal
9 Analysis System, June -- Systems. June 2006.

10 The next is GST-6577; Exhibit 7 on the first page.
11 The title page is GAF, all in caps, Projected Liabilities
12 For Asbestos Personal Injury Claims As Of January 1994,
13 Mark A. Peterson, Legal Analysis Systems, March 10, 2005
14 (Excerpt).

15 The next one is Exhibit GST-6578. And this is the
16 -- it's the document -- it's in preparation of a normal
17 filing for the docket of the court in the -- In Re:
18 Federal-Mogul, Inc. Litigation in the District Court for
19 the United States District Court for Delaware. It is
20 titled Supplemental Report of Mark A. Peterson. There's
21 a title page, the third page in, Turner and Newstet
22 Projected Liabilities Supplemental Report, Mark A.
23 Peterson, Legal Analysis Systems, April 26, 2005.

24 The next exhibit is GST-6579. The title is Owens
25 Corning and Fibreboard Projected Liabilities For Asbestos

Cross - Peterson

1 Personal Injury Claims As Of October 2000, Mark A.
2 Peterson, Legal Analysis Systems, October 15th 2004.
3 Fibreboard is spelled unconventionally
4 F-I-B-R-E-B-O-A-R-D.

5 The next exhibit is marked GST-6580 and it's in
6 the Federal-Mogul case on the filing of the docket and is
7 the expert report of Dr. Mark A. Peterson. It was
8 submitted by Campbell and Levine and Caplin and Drysdale.
9 On the third page it's Turner and Newstet, Inc. Projected
10 Liabilities For Asbestos Personal Injury Claims, Mark A.
11 Peterson, Legal Analysis Systems, November 29, 2004.

12 Next, GST-6581. Exhibit E. The title of the
13 paper is Armstrong World Industries, Inc. Projected
14 Liabilities For Asbestos Personal Injury Claims As Of
15 December 2000, Mark A. Peterson, Legal Analysis Systems,
16 November 6, 2003.

17 Next, GST-7203. And it is in the case In Re: API,
18 Inc. United States Bankruptcy Court District Of
19 Minnesota. And the title is Declaration of Dr. Mark A.
20 Peterson, Expert For Court-Appointed Legal Representative
21 Of Future Asbestos Claimants. And that's the last of the
22 documents.

23 THE COURT: What's the date on that last one?

24 THE WITNESS: The last one is dated -- it attaches
25 a report, it's at the end, or at least some analysis. It

Cross - Peterson

1 has a number of exhibits attached to it. It is dated
2 December 2, 2005.

3 BY MR. CASSADA:

4 Q. These are not the complete estimation works of
5 Dr. Peterson, are they? You've rendered many other
6 reports in many other cases, haven't you?

7 A. I have. No, it is not complete. It is not the
8 complete library. There are others and -- there are many
9 others, probably.

10 Q. Getting back to the bankruptcy wave. Do you
11 recall in the Federal-Mogul case, on June 20, 2005, you
12 were asked:

13 Question: "Now it's your view, sir, that the
14 bankruptcy of other defendants is something that
15 affects every other solvent defendant in the tort
16 system, correct?"

17 Answer: "Yes."

18 Question: "I know you try to be consistent in
19 your testimony on that, right?"

20 Answer: "I try to be consistent generally, but
21 certainly with regard to that."

22 Do you recall that testimony?

23 A. I don't recall it.

24 Q. Do you doubt that those questions were asked and
25 you gave those answers?

Cross - Peterson

1 A. No, I don't doubt it. I just don't recall it.

2 Q. Okay. But you agree that when a company's filed
3 for bankruptcy, it affects every solvent defendant in the
4 tort system.

5 A. I agreed with that then, and I agree with it now.

6 Q. Okay. And during the API case, in your
7 declaration, you stated, "During 2000 and 2001, the most
8 significant source of payments to asbestos
9 claimants evaporated with the commencement of
10 proceedings under Chapter 11 of the bankruptcy
11 code by eight of the last major asbestos
12 manufacturers. Small companies, like API, which
13 had been peripheral defendants, now became a focus
14 of asbestos litigation. These pressures were
15 particularly acute for API which was a distributor
16 for Owens Corning, the most important of the
17 target manufacturer defendants that entered
18 bankruptcy during this period."

19 You made that statement in a declaration that you
20 filed with the court on December 2nd 2005; correct?

21 A. I have no reason to doubt that.

22 Q. Okay. And in the Armstrong case, you further
23 recognized the impact of what we now call the "bankruptcy
24 wave." You testified that, "The bankruptcies of other
25 defendants affected and increased the obligation

Cross - Peterson

1 of remaining defendants. USG has written about
2 that in its financial statements. Every expert
3 that I know recognizes that the impact of a
4 defense -- one defendant entering bankruptcy is to
5 raise the shares of the remaining defendants.

6 Here we have to assume that Armstrong would have
7 picked up that share because we're assuming that
8 it remained in the tort system for purposes of
9 this forecast. So that would have increased
10 immediately the demands that plaintiffs made to
11 make up -- they were trying to make up for money
12 they lost when other companies went into
13 bankruptcy. They would have increased their
14 demands against Armstrong."

15 Did I read that correctly?

16 A. Yes.

17 Q. And you recall that testimony or something to that
18 effect in the Armstrong case?

19 A. I recall having discussed the impacts of
20 bankruptcies in most of these cases. I agree with it.
21 I've since continued to study and learn about asbestos
22 litigation. I'm an empirical researcher, as you asked
23 earlier. I try to employ the scientific method of
24 understanding the domain I'm studying in order to be able
25 to make better projections and predictions in the future.

Cross - Peterson

1 Since then I've learned a lot, and I've come to
2 understand that I don't disagree with any of that. But
3 I've understood that there were a lot of other
4 contemporaneous events that also contributed to it, as
5 I've testified here.

6 Q. Right.

7 A. And as I've testified all that here.

8 Q. But this particular aspect of your opinions,
9 during the 2000s, was core to your estimation opinions in
10 those cases.

11 A. I think it's core here now. The effect of the
12 changes in the tort litigation system for asbestos in the
13 -- after the late '90s, it was multifaceted. And this
14 was a significant event, there's no doubt about it.

15 Q. And in your USG --

16 A. Set of events.

17 Q. Yeah. And in your USG report, you stated, "Had
18 USG remained outside of the bankruptcy after these
19 eight other major defendants filed for Chapter 11
20 protection, USG's asbestos liabilities would have
21 increased greatly because of those filings, as
22 plaintiffs and their counsel would expect the
23 remaining solvent defendants still in the tort
24 system to 'pick up the share' of defendants who
25 sought bankruptcy protection.

Cross - Peterson

1 That was part of your opinion in USG, wasn't it?

2 A. It was a part of my opinion. And it was an
3 opinion specific to USG. The impact of that, of course,
4 is going to differ among companies. USG seems to have
5 been particularly hard hit by those events. API is a
6 smaller company, for example, and it probably would have
7 been less significantly hit by the bankruptcies
8 themselves. But we can't know what the effect of the
9 bankruptcies were, because it can't be isolated from the
10 other contemporaneous events.

11 Q. But this was the basis for your opinion in that
12 case that there would be a trend of increasing average
13 settlement values for USG.

14 A. It isn't the only case, excuse me.

15 Q. You had settlement values multiply in that case?

16 A. There were other reasons then that I testified to
17 and wrote in my report. They were a CCR member. CCR
18 ended. CCR was an organization that helped minimize the
19 amount that they -- they had, and other members had, to
20 pay. That was also a significant event. So there were a
21 number of things that happened then.

22 Q. CCR flew apart because of the bankruptcy wave?

23 A. No. It flew apart for other reasons. It flew
24 apart for all the reasons that I testified to you
25 yesterday.

Cross - Peterson

1 Q. Okay. Well that -- you and I actually met back in
2 the CCR days, didn't we?

3 A. Yes. We had -- we go back that far.

4 Q. And our case was the National Gypsum case?

5 A. It was. And they were a CCR member, and they had
6 already gone through bankruptcy case.

7 Q. They had gone through bankruptcy -- they were in
8 bankruptcy. But as a result of the litigation we were
9 in, National Gypsum Company withdrew from the CCR;
10 correct?

11 A. I don't know what role the litigation in and of
12 itself played. I can't speak to that.

13 Q. Well, because it -- the trust became a limited
14 fund at that point, so National Gypsum withdrew. And
15 then others withdrew because of the pressures of the
16 litigation. And the remaining CCR members could not bear
17 to continue to pay CCR's shares, could they?

18 A. Well, that -- I do agree with that.

19 Q. So it was the bankruptcies of these defendants
20 that precipitated the demise of CCR.

21 A. There were a lot -- no, I don't agree entirely
22 with that. The point of my testimony is that there were
23 a lot of things going on. Some of those may have been
24 more important to that particular company. I don't know
25 that anyone could ascertain that. You can't isolate,

Cross - Peterson

1 when you've got a dozen things -- actually, there are
2 probably 20 things I talked about yesterday. When you've
3 got all that going on, you cannot say that one of those
4 20 things is the sole responsibility. That's a post hoc
5 ergo propter hoc fallacy.

6 Q. These companies that we're going to look at, and
7 these cases you served as a claims estimator, these were
8 the largest CCR members. They filed for bankruptcy and
9 the CCR flew apart. Let's look more closely at what you
10 said in --

11 A. I'm sorry. Are you saying that National Gypsum
12 was responsible -- their leaving CCR was why CCR flew
13 apart? I don't agree with that.

14 Q. First it was National Gypsum; then it was GAF.
15 National Gypsum was ten percent of the CCR, wasn't it?

16 A. CCR was terminating. It was falling apart before
17 most of these bankruptcies.

18 Q. The first domino there was National Gypsum
19 withdrawing.

20 A. Oh, I don't think so.

21 Q. All right. Let's look at your USG estimate, just
22 to get into more details about your opinion. You were
23 talking -- you were addressing the bankruptcy wave in
24 terms of the impact it would have on USG's average
25 settlement values; correct?

Cross - Peterson

1 A. I'm sorry. Would you repeat your question?

2 Q. Well, it was all about -- the impact of the
3 bankruptcy wave was to affect your analysis of average
4 settlement values because that was a part of your
5 formula; right?

6 A. I think that was the nature of my testimony. Yes.

7 Q. Okay. So you say here that, in addition to these
8 upward pressures on its aggregate asbestos liability
9 caused by the dissolution of the CCR, what you're talking
10 about, USG also would have faced an increase in liability
11 due to the bankruptcy of many top tier asbestos
12 defendants. So we didn't make that term up. We actually
13 got that term from you. Between January 2000 and
14 December 2001, eight traditional top tier asbestos
15 defendants, with historically very large asbestos
16 liability, each filed for bankruptcy protection. And
17 there they are. Those are the top tier defendants.
18 Babcock and Wilcox, February 2000. Owens Corning and
19 Fibreboard, October 2000. Armstrong World Industries,
20 December 2000. GAF, January 2001. Pittsburgh Corning,
21 April 2000. W.R. Grace, April 2001. Turner and Newstet
22 and the other Federal-Mogul companies, October 2001.

23 Now we add USG to that -- to those, and there you
24 have the bankruptcy wave. Right?

25 A. Those all occurred then. That's what was -- it

Cross - Peterson

1 was a colloquial term within the asbestos litigation
2 industry. Yes, I think that's what people probably
3 meant.

4 Q. Okay. And you go on to say that -- you said, "As
5 in all other estimations of a bankruptcy debtors'
6 asbestos liability, this report forecasts USG's
7 liability for asbestos claims as they are treated
8 and valued within the tort system accepting all of
9 the characteristics and tort litigation and
10 assuming, for purposes of estimation, that USG
11 continued in tort litigation as if it had not
12 filed for bankruptcy protection.

13 Let me pause there. So in each of these cases you
14 were valuing the liability of each defendant as if that
15 particular defendant had stayed in the tort system but
16 all the rest of them had gone into bankruptcy.

17 A. That's what you had to do. The courts wanted to
18 know -- it's a hypothetical exercise, no doubt. You want
19 to look at this company, had it remained, and given the
20 look of the environment, it was otherwise unchanged.
21 That's what you just described.

22 Q. Okay. And then you go on to say, and this is the
23 language highlighted, "Had USG remained outside of
24 bankruptcy after these eight other major
25 defendants filed for Chapter 11 protection, USG's

Cross - Peterson

1 asbestos liabilities would have increased greatly
2 because of those filings as plaintiffs and their
3 counsel would expect the remaining solvent
4 defendants still in the tort system to 'pick up
5 the share of the defendants who sought bankruptcy
6 protection.'"

7 I read that correctly, didn't I?

8 A. You did.

9 Q. Okay. And Turner and Newstet, one of the other
10 top tier defendants. This is what you said in that
11 estimation report. You talked about eight asbestos
12 defendants who were paying the largest shares of
13 compensation to asbestos plaintiffs filing for
14 bankruptcy.

15 A. I'm sorry. Where are you reading?

16 Q. I'm reading Part A there.

17 A. Oh. (a)? Okay. All right.

18 Q. So you talk about eight asbestos defendants, and
19 you talked about eight in USG. But in this one, you
20 dropped Turner and Newstet and added USG; right?

21 A. I'm speaking about Turner and Newstet. So it's
22 the impact of the bankruptcies other than Turner and
23 Newstet's. Of course.

24 Q. It's the eight major or top tier defendants?

25 A. I accept that as likely.

Cross - Peterson

1 Q. And you go on to say in the highlighted language:

2 "Together these events eliminated sources

3 providing

4 most of the money paid to asbestos victims in the

5 U.S. when these losses of compensation plaintiffs

6 then looked to remaining asbestos defendants to

7 make up the lost compensation. Plaintiffs

8 increased their demands on defendants who remain

9 in the litigation and forced increases in

10 settlements among those defendants."

11 That's what you said; right?

12 A. Well you didn't read everything I said. You

13 Omitted (b) which says, "(b) In January 2001, the CCR

14 dissolved removing the single source of largest

15 payments being received by the U.S. asbestos

16 plaintiffs."

17 Turner and Newstet was a member of the CCR. And

18 the statement is, together, the bankruptcies and the

19 dissolution of CCR contributed to the increase in

20 payments, which is the same point I made in the USG

21 excerpt that you just showed me. Since then I've

22 continued -- as I said, I've continued to study this.

23 This was probably a circa 2005 statement.

24 In the last eight years I've continued to study

25 asbestos litigation. That's what I do. I've learned a

Cross - Peterson

1 lot more. And particularly in this case, I've intensely
2 looked at it and learned a lot more. So my opinions
3 today don't -- I don't discount that. That's a part of
4 my opinions today, but I have a better understanding of
5 all the other events that have happened that contributed
6 to those changes. And even if there had been only four
7 of these people going into bankruptcy, I think the impact
8 on every other company would have been the same.

9 Q. But you talk about the CCR like it was independent
10 from these bankruptcies. Let's go back to your USG
11 report. And you talked about in this who filed and when.
12 You had Armstrong World Industries, December of 2000.
13 GAF January, 2001. Now those were two of the three
14 largest members of the CCR; correct?

15 A. Yes.

16 Q. Okay. So that was -- that was, like, 35, 40
17 percent of the CCR leaving the room in January of 2001,
18 which is the date that you said the CCR flew apart.

19 A. Your causal attribution I disagree with.

20 Q. Okay.

21 A. The CCR broke apart -- it was breaking apart. But
22 by -- in the 2000 that dissolution was under way. The
23 disagreements within the members had caused its
24 dissolution was apparent before 2000. It was falling
25 apart. It really began with G-1 and their banishment

Cross - Peterson

1 from the CCR. All those things -- they were winding
2 down. The CCR, these companies, would not have the
3 protections.

4 Your Honor, the CCR is a consortium of asbestos
5 defendants where they jointly attempt to settle.

6 THE COURT: I know that.

7 THE WITNESS: Okay. But that really moderated and
8 reduced the amount each claimant had to pay -- each of
9 the member defendants had to pay. When that ended, each
10 member lost its cover. It was going to have to pay more.
11 And the evidence is they all did. They got hit hard and
12 fast. And so the CCR dissolution, in my opinion, helped
13 contribute to the bankruptcies. It's not the other way
14 around.

15 BY MR. CASSADA:

16 Q. So the CCR disbanded or flew apart in January
17 2001. In the two months preceding that, two of its three
18 largest members left. And in -- later on, Turner and
19 Newstet, the other large member, perhaps the largest
20 member, left the CCR.

21 A. Everything you said is true. The date of the
22 dissolution, the formal date of the dissolution, was in
23 early 2001, January 2001. But it had fallen apart and
24 effectively stopped operating as a group settlement
25 process. These are like -- these are smart people in

Cross - Peterson

1 these companies. They knew that this was ending and they
2 were going to have to make other arrangements. For many
3 of the members the other arrangements was to run to
4 bankruptcy counsel.

5 Q. But in this estimation report which was done,
6 what, mid-2000s?

7 A. Turner and Newstet? I don't know which one it is.
8 There are two of them. But it's mid-2000s.

9 Q. Sure. So at this point, you were -- you had been
10 engaged as the claims expert in all the top tier cases,
11 at least all of them except for Pittsburgh Corning and --
12 actually, you were engaged in Pittsburgh Corning too?

13 A. I was in Pittsburgh Corning. Yes.

14 Q. So you had all the data -- you had all the data of
15 what these companies were paying. And you said that
16 these events eliminated sources providing most of the
17 money paid to asbestos victims in the U.S.

18 A. That's the combination of the termination of CCR
19 and the bankruptcies. Of what was left, that took a big
20 hit on them it was no doubt. But I've since -- I could
21 not use, publicly, the information from these until the
22 reports had become public. And looking at it now
23 historically, as I did in my testimony here, and having
24 read further discussions about the CCR and ACF, I've come
25 to understand that the CCR was really formed as a group

Cross - Peterson

1 of peripheral defendants in the '80s. And that's the
2 nature of the organization, and it pursued a peripheral
3 strategy in resolving asbestos litigation.

4 So, yes, in aggregate they were important.
5 Singly, they all weren't important. Some of them became
6 important. Turner and Newstet, without the protection of
7 CCR, would have become the target defendant. Not just a
8 target, they would have probably become the target
9 defendant because they were as bad a company as Manville.
10 And they didn't have the assets that Manville had, but
11 they were -- they would have been a real target, and they
12 were a real target of litigation as was -- well, some of
13 the companies. W.R. Grace, who was not a member of CCR,
14 would have also been a target, again, because there was
15 enormous bad publicity about both of those companies
16 available. A lot of really dirty documents.

17 Q. W.R. Grace, that was the last of these estimation
18 opinions. You actually testified in that case in
19 September or so of 2009?

20 A. It was after -- yes. I didn't really testify
21 about my estimation. I testified about other matters. I
22 testified about the Libby case, primarily.

23 Q. Actually, your estimation report went in.

24 A. Yes.

25 Q. Okay.

Cross - Peterson

1 A. That was not really the subject.

2 Q. You testified. In fact, I was there in the
3 courtroom and I asked you some questions about it.

4 A. Yes. I remember that well.

5 Q. Okay. That was 2009. So here, almost a decade
6 after the bankruptcy wave and you were saying then, after
7 these bankruptcies had removed the biggest sources of
8 compensation of asbestos claims, plaintiffs and their
9 lawyers demanded and received greater settlement payments
10 from those defendants who remain in litigation. And then
11 you've got -- you describe again how that when the
12 bankruptcies happened, the plaintiffs' lawyers can
13 successfully argue that the survivors pick up the share.
14 Right?

15 A. I said that. I agree with it.

16 Q. Okay. And now you -- you're calling these -- you
17 called these then, all throughout the 2000s, as the major
18 defendants; the largest sources of compensation.

19 A. In aggregate they were; individually, they
20 probably weren't.

21 Q. Okay.

22 A. It's hard to tell when you're in CCR because it
23 distorts --

24 MR. INSELBUCH: Excuse me. Mr. Cassada, I take
25 it the italics are yours and not Dr. Peterson's?

Cross - Peterson

1 MR. CASSADA: Yes. That's what it says down
2 there, in fact.

3 MR. INSELBUCH: All right.

4 BY MR. CASSADA:

5 Q. So we've talked about USG. We talked about what
6 you said in W.R. Grace. In fact, this opinion was -- it
7 was -- this aspect of your opinion was key to the
8 estimation reports in all these cases; right? In
9 November of 13 -- 2003, in Western/MacArthur and T&N in
10 November 2004. January 20, 2005, in the Federal-Mogul
11 testimony that we described. December 2, 2005, the API
12 declaration we read from. The Armstrong testimony on May
13 24, 2006. The USG report at four, we quoted from that in
14 May of 2006. In May of 2007 you made the same statement
15 in ASARCO. And in June of 2007 you filed the report in
16 W.R. Grace which you updated in January 2009 and gave
17 testimony about some eight months after that. Correct?

18 A. Well, I think the first part of your question said
19 it was a major basis of my opinion or, I think, the basis
20 of my opinion in each of those cases. I have no doubt --
21 I haven't gone back and looked at all these. I have no
22 doubt there was a mention of the bankruptcies -- these
23 bankruptcies. They were a significant event, certainly,
24 just as the bankruptcies in the early 1990s were
25 significant events. There's no question. And they

Cross - Peterson

1 disturbed -- they created perturbations throughout the
2 asbestos litigation system. I don't believe I would have
3 said they were the single most important event in these
4 things, either in causing a bankruptcy of these companies
5 or in what their future liability.

6 For example, Western MacArthur was the primary
7 distributor of Manville products in northern California
8 and throughout California. Its liability arose not so
9 much because of what happened in these bankruptcies. It
10 occurred because it was the proxy for Manville.
11 Plaintiffs' lawyers tried the case against Manville and
12 stuck it on MacArthur, and that's why the values, the
13 estimated values, that the court accepted in that case of
14 over a half million dollars per claim for Mesothelioma
15 was because they were the surrogate for Manville; they
16 were the proxy. That's the important issue there. It
17 dwarfs anything else.

18 Case by case there are different matters that
19 affect each case. In aggregate there are lots of other
20 things that happen, but the bankruptcies were a
21 significant matter. In some ways they were more
22 significant in the 2000s than the 1990s, not because the
23 companies were more major. Really, the companies that
24 went into bankruptcy in 1990s were more major. But this
25 was important because the companies in the '90s were

Cross - Peterson

1 already gone into bankruptcy. That money was already
2 gone.

3 So the kinds of adjustments you were asking about,
4 people picking up the share, that had already happened.
5 The source of revenue had been diminished. It had been
6 diminished by the Manville bankruptcy. It had been
7 diminished by UNR's current bankruptcy. It had been
8 diminished by the bankruptcies in the early '90s. It had
9 been further diminished here. So that was important.
10 All kinds of other things were important. You can't
11 isolate the impact of any one of them.

12 Q. Dr. Peterson, in T&N Federal-Mogul, Armstrong
13 World Industries, USG, ASARCO and W.R. Grace, you relied
14 on the bankruptcy wave as a basis for concluding that the
15 future average settlement values for those companies were
16 going to increase dramatically; in fact, multiply.

17 A. I relied upon it as a matter. For another
18 example, Turner and Newstet. In Turner and Newstet, I
19 emphasized greatly the terrible corporate history of
20 Turner and Newstet. I emphasized the publication of a
21 book very, a revealing book, describing those practices
22 about the time. Those were materials that were available
23 to every plaintiff's lawyer. They knew it.

24 Now that Turner and Newstet was out of CCR, that
25 was probably the most significant event that they were no

Cross - Peterson

1 longer in CCR. The plaintiffs' lawyers had an incentive
2 for putting that case on against Turner and Newstet. And
3 as a result, verdicts against them and values of their
4 claims went up enormously. As Mr. Hanly testified
5 yesterday, it wasn't the other bankruptcies that was
6 killing Turner and Newstet at that time, it was its own
7 corporate history and the widespread publicity of it.
8 You need to look at it case by case.

9 W.R. Grace. In W.R. Grace it wasn't the other
10 bankruptcies so much as it was Libby, Montana and its
11 total disregard for the health of people in that city and
12 its poisoning them and all the publicity that got. And
13 the media. There were movies made of it and shown on
14 television. There were books written about it. It was
15 in the newspapers all over the country. People all knew
16 about W.R. Grace. And it was that that was the most
17 important event for them, not the bankruptcies. You
18 can't pick one thing out. You've got to say all these
19 things happened jointly. They were devastating.
20 Jointly, they devastated -- they increased the value of
21 Garlock.

22 Interestingly, Garlock rode that wave better than
23 anyone else. Its values went up less than anyone else.
24 This company had wonderful defense counsel. If I ever
25 get in serious trouble, I'll remember them.

Cross - Peterson

1 Q. Let's talk about Garlock and what you were saying
2 about Garlock when you were testifying about these top
3 tier defendants. In 2003, after the bankruptcy wave,
4 after the defendants, you were providing testimony to the
5 court similarly to the testimony today where you were
6 giving the court the lay of the land in asbestos
7 litigation and Garlock came up. What did you say? You
8 said Garlock is not in bankruptcy. They were a rather
9 minor producer of asbestos products. Garlock is still
10 there, but they made a gasket and it's not a significant
11 product, it's not a significant defendant.

12 So isn't it true, Dr. Peterson, that Garlock's low
13 payments were because it made a product that just wasn't
14 that dangerous? It made a product remarkably different
15 from the products of those top tier defendants; correct?

16 A. I didn't -- this doesn't say that.

17 Q. It made -- you said it made -- it did not make a
18 significant product.

19 A. Well, you said dangerous. Dangerous is -- I had
20 no real knowledge about asbestos content or the specific
21 nature of Garlock products at that time.

22 MR. INSELBUCH: I think -- excuse me, Mr.
23 Cassada. Your Honor, if he's going to show him a little
24 snippet out of testimony that took place ten years ago, I
25 think he should give him an opportunity to review the

Cross - Peterson

1 transcript and see the context in which the question was
2 asked.

3 THE COURT: If he needs to, he can ask for it.

4 BY MR. CASSADA:

5 Q. Do you need to see the transcript?

6 A. I'd be curious about this. I don't remember this.
7 I don't know why I would have been talking about this in
8 that case. I don't even remember what trial this was.

9 Q. While we're retrieving the transcript. You do
10 understand, don't you, that there's a difference between
11 a gasket and the thermal insulation and other highly
12 friable products made by those top tier defendants?

13 A. They're different kinds of products.

14 Q. They're different kinds of products and they have
15 different kinds of defenses; correct?

16 A. Some.

17 Q. But you understand -- you know about gaskets. You
18 understand that with gaskets, there's a very serious
19 causation defense.

20 A. I know that the defendants -- it's more a relative
21 causation defense, as I understand it.

22 MR. INSELBUCH: Do I understand, Mr. Cassada,
23 that the first piece of this testimony is from page 719
24 and the second piece is from 782?

25 MR. CASSADA: I've got the whole thing right here.

Cross - Peterson

1 MR. INSELBUCH: But is that where the quotes are
2 from so that we can find it?

3 MR. CASSADA: Yes. That's correct.

4 THE WITNESS: Thank you.

5 BY MR. CASSADA:

6 Q. Sure.

7 A. 792? Is that the -- 782.

8 Q. 782, lines 17 to 19.

9 A. Thank you.

10 Q. Sure.

11 A. All right. I'm sorry. Now I've read both of
12 those, and I've read a bit of what preceded them. Would
13 you like to re-read your question or --

14 Q. Well, I believe I've asked the question and it has
15 been answered. Mr. Inselbuch suggested you might want
16 to see the transcript and you've had a chance to look at
17 it. I can ask you a question.

18 A. Well, I'll state my reaction to this. They were
19 not a significant defendant. I think that that's
20 probably right in the era we're talking about. I don't
21 know what era we're talking about here.

22 Q. This is 2003?

23 A. I know what the testimony is. I don't know what
24 the subject matter of the questioning is, whether it's
25 current or not. And even in 2003, if you look or recall

Cross - Peterson

1 the exhibits or demonstratives I had yesterday, Garlock
2 was still paying less than most people as long as -- for
3 the whole time they remained in bankruptcy. And so I
4 would agree that they're relatively -- they weren't a
5 terribly significant defendant.

6 Q. Right.

7 A. I think that's probably still true.

8 Q. Right. But this testimony -- I'm sorry.

9 A. And the matters with regard -- and in all honesty,
10 what I knew about gaskets was really based upon my
11 involvement would have been, my early involvement in the
12 Federal-Mogul case and Flexitallic there, and they had
13 very little litigation. So I didn't know the details of
14 Garlock's litigation. I hadn't been engaged in it and I
15 hadn't studied them. It was an offhand comment. And in
16 the scheme of all of the asbestos-containing products,
17 gaskets are not the central source of asbestos exposures;
18 I think there's no question about that. So I don't
19 disagree so much with what I said as that I think I was
20 relatively uninformed about it.

21 Q. Okay. Well, I wouldn't call it an "offhand
22 comment." Here is the transcript with the question that
23 led you to describe Garlock. And you were being asked
24 about the long time defendants, defendants who were in
25 the system here in the late 1970s or '80s, perhaps

Cross - Peterson

1 thereafter. So you were giving the lay of the land on
2 asbestos litigation; the same kind of testimony that you
3 gave yesterday on direct examination when you were trying
4 to explain to the Court what the litigation was all
5 about.

6 A. Well, no, I was given a list of some defendants.
7 That's what Mr. Mullen said. Here's a list of -- I read
8 the question before. Here's a list of some defendants.
9 So this wasn't something I generated. He asked me a
10 list. I knew that Garlock made gaskets. I knew
11 something about gaskets. I didn't know very much about
12 it. I know more now.

13 Q. Well you knew a lot about gaskets then; you were
14 in the T&N case.

15 A. I didn't know much about it. It wasn't a
16 significant defendant or the focus of my forecast there.
17 I had to make one, but it was T&N the whole action there.

18 Q. All right. So in T&N you learned a lot about the
19 gasket, because T&N had a subsidiary named Flexitallic.
20 We've heard about Flexitallic in this case. In fact, the
21 Committee offered a witness, Mr. Hanly, who testified
22 that Flexitallic's a good proxy for Garlock. And here's
23 what you said about Flexitallic, you said,

24 "Flexitallic got lots of claims because
25 Flexitallic's product, which was a disk-type

Cross - Peterson

1 gasket, was brightly colored and brightly labeled,
2 and it was ubiquitous and very easily identified.
3 So lots of people sued Flexitallic."

4 Now that sounds a lot like your description of
5 Garlock. But you went on to say, "But the product, at
6 least according to Flexitallic and the Hanly firm,
7 almost never releases asbestos. So it's a case --
8 it's a defendant that's got lots of claims because
9 of product identification, but there's a serious
10 causation problem with regard to the product. But
11 Flexitallic got lots of claims. Ferodo didn't get
12 so many, but neither one of them is a defendant
13 like many others that are on that list. To have
14 included them would have been misleading to the
15 Court because their experiences are just not
16 representative of the kind of past experience or
17 like the future experience of Turner and Newstet.
18 Thank you for the opportunity to clarify that."

19 That was your testimony; correct?

20 A. It was. But today I don't know what the list was
21 that this refers to. I have no idea what that is. I was
22 quoting the statement by Mr. Hanly who defended them.
23 And my understanding is I -- sitting here right now
24 today, I don't have -- I would not say I have an expert
25 knowledge about the construction of Flexitallic, no

Cross - Peterson

1 longer have it certainly about the nature of the physical
2 properties of Flexitallic product, but I understand it's
3 quite different than what Garlock's was. And I was
4 specifically talking about that defendant, not Garlock.
5 So, I mean, yes, I said that. I don't really know the
6 basis of it. And I was quoting the representation of
7 defense counsel saying it almost never releases asbestos.
8 I would expect that -- I could probably hear those words
9 said by some of Garlock's defense counsel.

10 Q. But yesterday when you put up the settlement
11 values that defendants were paying, you showed Garlock
12 way down at the bottom.

13 A. Yes.

14 Q. You were trying to paint Garlock with the same
15 brush as these top tier defendants. And you said that
16 they were just paying less because they had really good
17 lawyers or good strategy or they were keeping their --
18 keeping low to the ground.

19 A. They weren't top tier defendants. They weren't
20 people that managed the litigation, that were included in
21 every case, that were included in every trial, that
22 pursued a trial strategy like Manville had been or O.C.
23 was or Pittsburgh Corning was. They were in that -- they
24 were in that whole -- the rest of those people. Most of
25 those people were not major defendants.

Cross - Peterson

1 Q. Right.

2 A. I mean, it's a labeling. I don't think the
3 labeling in and of itself is particularly constructive or
4 useful. The point is, Garlock was not a target
5 defendant. It never was a target defendant, except in
6 particular -- for an individual but in a general matter.
7 It paid relatively low values. It tried to keep a low
8 profile. It was smart enough to know that it did not
9 want to become a target, and it didn't become that except
10 in particular cases.

11 And it was also quite clever in its aggressive
12 litigation posture that, if you come near me, I'm going
13 to bite you. And you don't tread on them. That's kind
14 of the attitude. And they were willing to try cases, and
15 did so. So they had a very effective style, but they
16 were not a major defendant. And most of the other
17 companies that, if you just look -- if you judge it in
18 terms of how much they're paying, none of the CCR
19 members, really, other than, well, some -- none of them
20 were major defendants at the time that the CCR broke up.
21 Turner and Newstet and W.R. Grace were on their way to
22 becoming so; perhaps USG, too. Maybe GAF would have
23 become one too, just because the plaintiffs' lawyers
24 hated them so.

25 Q. But you do understand that when the claims were

Cross - Peterson

1 brought against Garlock, there was a serious causation
2 problem.

3 A. I understand that's Garlock's position and point.
4 Yes.

5 Q. Okay. So let me see if we can summarize where we
6 are then. During the 2000s, you said every expert that
7 you know recognizes that the impact of a defense, one
8 defendant entering into bankruptcy, is to raise the
9 shares of the remaining defendants. That's what you said
10 then. Do you still agree with that today?

11 A. I wouldn't agree with that statement. Not every
12 defendant is going to cause other -- I think that's
13 overly broad. I would disagree with that. I should have
14 known better at the time. Some defendant, yes. A bunch
15 of defendants could have been impacted. One defendant,
16 not necessarily. API's going into bankruptcy wasn't
17 important outside of Minnesota.

18 Q. So now you say, Garlock -- this specific
19 defendant, Garlock's payments and the present value of
20 those payments increased from 2000 to 2009 on not a
21 monotonic basis but on a fairly steady basis. Over that
22 period of time a number of defendants went into
23 bankruptcy and came out of bankruptcy. But also during
24 that time, a great many other events happened and the
25 litigation changed in many ways. Those are all things

Cross - Peterson

1 that happened. No one has the capability of
2 disaggregating any one of those matters, and it is
3 inappropriate, unscientific and flawed to attribute
4 changes to Garlock's settlements to one of a dozen things
5 that happened. You can't do it. You can't disaggregate
6 it.

7 So you're speaking now to Garlock's argument that
8 the bankruptcy wave increased its settlement values?

9 A. The words speak for themselves. I think it's a
10 great statement. I hope the Court regards it seriously,
11 because it summarizes what we've been discussing for the
12 last hour.

13 Q. Right. But now you retreat from the bankruptcy
14 wave.

15 A. No.

16 Q. Have you --

17 A. No. No. I have to speak to that. The bankruptcy
18 wave happened. It had an impact. Lots of other things
19 happened. You cannot point to any one of those things
20 and say, would Garlock have been in better shape if none
21 of those companies had gone into bankruptcy? Of course,
22 it would. It would have been in better shape if none of
23 those things had happened. But all of them did. And
24 cumulatively, they added on one layer after another.

25 I live in California where I see levels of earth

Cross - Peterson

1 piled up because you can see the earth there. It is --
2 these are levels of strata or problems that were heaped
3 on Garlock at that point in time and every other
4 defendant still in the litigation. All together, they
5 were devastating. Garlock handled it better than
6 anybody.

7 Q. But you have not attempted to -- and in fact, you
8 say you cannot quantify any of these various factors that
9 you said were at play in Garlock's cases.

10 A. I could try, but it wouldn't be persuasive to even
11 me.

12 Q. And you have --

13 A. It would be a bad effort, a bad thing, to try and
14 do.

15 Q. Yesterday we learned about what you called the
16 "lesson drawn from Manville." Do you remember that?

17 A. From the Manville -- from, basically, the lesson
18 drawn from the Findley v Blinken class action settlement
19 when Jack Weinstein seized it. The correction of the
20 Manville trust. It was the lesson drawn from the failure
21 and then the fix of the Manville trust. Yes. It showed
22 everyone what was going to happen with bankruptcies.
23 There was -- the plaintiffs' lawyers and the defendants
24 both hoped that Manville would come back into the
25 litigation the way it was in 1982. That didn't happen.

Cross - Peterson

1 It couldn't happen.

2 Jack Weinstein and the parties that negotiated the
3 resolution of that case made sure that it was set on a
4 proper course. I'm a Manville trustee now. We are in a
5 position that we believe we can pay all future claimants
6 as much as we can pay pending claimants now. It's a
7 pittance and it's a shame, but they all will get paid
8 equivalently. And all of those lessons were
9 institutionalized by the settlement of the Manville
10 trust, and that set the mode for every other subsequent
11 trust. And it also told the defendants, you know, once
12 someone's gone, they're gone.

13 Q. Is that -- that's a metaphor for saying that once
14 they're gone, the defendants who picked up their share
15 will never get relief from that? Is that what you're
16 saying?

17 A. That's the experience.

18 Q. Okay.

19 A. I showed that -- I showed that data yesterday.
20 When companies go into bankruptcy, when they come -- when
21 they go into bankruptcy and come out of bankruptcy, over
22 the history of asbestos litigation there's no discernible
23 effect of that.

24 Q. It's a one way?

25 A. It doesn't change anything. What happened in the

Cross - Peterson

1 2000s is, yes, you had a bunch of bankruptcies and values
2 went up, but it wasn't simply because of the
3 bankruptcies. It was a accumulation of dozen of things.
4 And, yes, that's true too. Once those changes have
5 occurred, almost all of those, you can't undo them.

6 When someone dies, you can't bring them back to
7 life. Manville died for the purposes of litigation. And
8 that's why the forecast from the 1990s that Dr. Bates
9 does is so inappropriate. You can't say that the
10 litigation system is going to be like it was in the
11 1990s. You can't revisit the past.

12 Q. So it's a one-way ratchet. They go out and you
13 pay more. They come back in --

14 A. Time and history are one way, unfortunately. I
15 wish at times it weren't.

16 Q. Let me ask you a question then. Garlock filed for
17 bankruptcy. And I take it, then, you would agree that
18 there are defendants out there who started paying more
19 money because Garlock filed for bankruptcy.

20 A. Marginally more because Garlock wasn't paying that
21 much. I showed that yesterday. But, yes, that was what
22 was wrong with my statement that you showed me a little
23 bit ago. One defendant in and of itself may not be
24 significant unless you're Manville or Owens Corning,
25 perhaps. Someone that's paying a lot of the freight

Cross - Peterson

1 would have some impact. It's a big, boulder dropping in
2 the water. Garlock would be a relatively small rock.

3 Q. So when companies return in the form of a trust,
4 those companies that are making up for that share,
5 they're still paying the same increased share.

6 A. Yes. There's not evidence -- I don't see evidence
7 that that changes. Because when the companies came back
8 they paid a fraction of that share.

9 Q. And that was fundamental to your estimation
10 reports and all the top tier defendants cases. You
11 pretended in each case that that defendant remained in
12 the tort system and everyone else filed for bankruptcy?

13 A. That's a different issue.

14 Q. Okay. And they increased.

15 A. In this court, I am valuing -- in my estimation
16 here and in every other case, I am valuing the value of
17 assets that are held by claimants. They have an asset.
18 They are creditors of the company. What's the value of
19 that asset? The value of the asset is how much now that
20 they've gone into bankruptcy. The court says at the time
21 of the bankruptcy, the date of the bankruptcy, what was
22 that asset worth in aggregate for these individuals? And
23 the value is established by the rights and the legal
24 system. So you have to assume that in the legal system
25 there is continuity that that asset will continue to hold

Cross - Peterson

1 its value.

2 If you say, okay. Now that they've gone into
3 bankruptcy, that asset isn't worth a damn and so we're
4 now going to discount it by 90 percent; the trust is only
5 going to be available ten percent. That's circular.
6 You're going to keep rolling over forever. You have to
7 assume -- it's hypothetical, no doubt. But you're
8 valuing the assets as of the date of the bankruptcy on
9 that date when they were in litigation. And if those
10 cases were going to be settled, they would be settled
11 within the litigation system.

12 That's why, yes, of course, you assume, for
13 purposes of the Garlock bankruptcy, that Garlock isn't in
14 bankruptcy. You have to do that. That's the basis and
15 the point of estimating the assets that's held by these
16 claimants. But everyone else is, because that's the
17 environment they're in. They're all in bankruptcy. And
18 their trusts are coming back and their trusts are paying
19 small change. And that has never been demonstrated that
20 that return of money is significant, even when Manville
21 came back and was paying a hundred cents on the dollar.
22 Manville paid \$700 million of money in 199- -- in 1989
23 and a little bit of 1990. That's a billion and a quarter
24 today. No defendant, in my knowledge, has ever put that
25 much money into claimants' hands in that period of time.

Cross - Peterson

1 There was no impact on what defendants were paid.

2 Q. Okay.

3 A. So the return on trusts doesn't seem to change
4 things, because the bargaining position's already been
5 established prior to that event. And it's damned hard to
6 get plaintiffs' lawyers to lower how much their demands
7 are.

8 Q. Okay. So let me just explore briefly that one
9 issue with you. USG was one of the companies whose
10 liabilities you estimated; correct?

11 A. It is.

12 Q. And they filed in 2001?

13 A. I believe that's correct.

14 Q. Do you know what they were paying on a
15 Mesothelioma claim in 1999?

16 A. It's charted on my chart. I don't offhand have it
17 in my brain.

18 Q. This is from the USG report, page 16.

19 A. I recognize it.

20 Q. Do you recognize that? Okay. So here is USG as
21 it was going into bankruptcy. It filed in 2001. You see
22 those average Mesothelioma values in the 1990s?

23 A. Yes.

24 Q. 21,000, 25, 36, 34. It went up in 2000 to 59. In
25 2001 they were paying 221?

Cross - Peterson

1 A. Yes.

2 Q. But they just paid a handful of claims that year;
3 right?

4 A. They had relatively modest number of claims. Yes.

5 Q. Right, in that year. But they paid a lot of year
6 claims in those prior years.

7 A. Well they paid those claims -- they're in CCR
8 through 1999.

9 Q. Right. So they were paying --

10 A. And in 2000. I don't know if those were paid in
11 CCR or outside of CCR. Because CCR, even though it still
12 nominally existed through 2000, there may have been
13 settlement deals that USG was making outside; I can't
14 speak to that.

15 Q. Okay.

16 A. In 2001, outside of CCR, certainly they were --
17 they paid a lot of money. That also happened to Turner
18 and Newstet. Look at Turner and Newstet. They had the
19 same experience.

20 Q. Sure. Sure. But in any event, when USG emerged,
21 you had -- you had under your -- the principles here, you
22 said that USG's future settlement values were going to
23 look more like the 221. In fact, I think you came out
24 with an average settlement value of 225 or \$225,000 or
25 \$250,000.

Cross - Peterson

1 A. That was what they would have been paying over
2 time because of the trend.

3 Q. Right.

4 A. I don't recall what it was. Their experience was
5 outside of CCR, when they were subjected now to trials on
6 their own and the attention of plaintiffs' lawyers, they
7 were hit badly and they paid a lot of money.

8 Q. But when you -- under your analysis, USG was going
9 to be paying over 200 because it was going to be picking
10 up the shares of all the other people who filed for
11 bankruptcy?

12 A. I'm sorry. Could you repeat that question?

13 Q. Under your analysis, USG was going to be paying
14 over \$200,000 on average for a claim because it was going
15 to "pick up the shares" of the other eight top tier
16 defendants?

17 A. No. They were also no longer in USG. The report
18 at the time -- I mean they were no longer in CCR. I
19 never -- particularly, for the CCR members, I'm not
20 saying that bankruptcies were the sole event going on.

21 Q. But it's true, isn't it, Dr. Peterson, that when
22 the USG trust emerged and started paying claims, it was
23 paying over a hundred thousand dollars per claim after
24 application of the payment percentage?

25 A. Sitting here right now, I don't know.

Cross - Peterson

1 Q. You don't deny that?

2 A. I don't know it.

3 Q. USG was paying more for a claim -- the USG trust
4 was paying more for a claim than USG was paying before
5 its bankruptcy.

6 A. They weren't paying \$221,000.

7 Q. They were paying over a hundred thousand dollars.

8 A. I don't know that. I don't know the accuracy of
9 anything you're saying.

10 Q. Well this is your pennies on the dollar argument.
11 You made the assumption that each of these top tier
12 defendants was going to be picking up the shares of the
13 other and increasing their settlement average and then
14 when they came out paying a percentage of that, and
15 you're saying that's pennies on the dollar.

16 A. They are paying pennies. That's their payment
17 percentage. They declare it. You can go online and see
18 it.

19 Q. Yeah. Let's go back to your methodology. The
20 methodology that you've applied in this case, you
21 describe it as the standard methodology based on
22 Nicholson-Perkel's selection incidence. And it's the
23 same methodology you applied in these estimation reports
24 that you've identified today?

25 A. In its general form. Yes.

Cross - Peterson

1 Q. Okay. And it's based on the Nicholson incidence
2 forecast of Mesothelioma claims into the future.

3 A. In part.

4 Q. Okay. And we have here -- I'm looking at slide
5 13. We have the Nicholson projected incidence for each
6 year beginning in 2011 through 2039. That comes directly
7 out of your report.

8 A. Yes. Although Nicholson stops in 2030, we just
9 extrapolate the trend after that based upon the past and
10 other sources.

11 Q. Okay. So when we're estimating Garlock's
12 liabilities, as you define it in this case, we're looking
13 at this population of claims starting with 2,729 people
14 who were diagnosed -- who were projected to be diagnosed
15 with Mesothelioma in 2011 and then going forward in each
16 period. Correct?

17 A. Well, in part, you're doing it on that. You're
18 also -- the forecast is based upon Nicholson's forecast
19 for the years 2006 through 2010 as well.

20 Q. Right. Well for future claims.

21 THE COURT: Is that the year they die or the year
22 they're diagnosed? It says "death year."

23 MR. CASSADA: This is the incidence model which, I
24 understand, is the year of diagnosis.

25 THE COURT: Okay.

Cross - Peterson

1 THE WITNESS: No. No. The incidence model is the
2 year of death.

3 BY MR. CASSADA:

4 Q. Well, it makes no difference for these purposes.

5 A. It actually doesn't make any difference
6 statistically either.

7 Q. This is the population of persons who might sue
8 Garlock, who might assert a claim against Garlock in the
9 future.

10 A. That's that basis of our forecast. Yes, that's
11 correct.

12 Q. So it's liability to these people who are -

13 A. It's a subset of them, those who filed claims.

14 Q. A subset of these people. So, fewer of these
15 people. Now down here on the right of the Nicholson
16 incidence population, a number of different bankruptcy
17 cases. In fact, I got these out of your CV. These are
18 cases in which you have served as the claims expert.

19 A. As one of the claims experts. Yes.

20 Q. One of the claims experts in each of these cases?

21 A. I believe so. I haven't looked at the whole list,
22 but there are a lot of familiar names there.

23 Q. Yeah. Over 40 of them?

24 A. I've been busy.

25 Q. You have been. You estimated the liability of

Cross - Peterson

1 each of these defendants using the same methodology
2 you've brought to this court.

3 A. Certainly, for most of them. Sometimes you really
4 have terrible information. And you've got to be -- you
5 can't use all of the characteristics and features of the
6 current report. But that's a general rule; I'd agree
7 with that.

8 Q. And most of these companies have established
9 trusts?

10 A. Not all of them. Most have.

11 Q. Most of them have established --

12 A. Yeah. I would expect probably most have. Yes.

13 Q. Okay. And those trusts are paying claims out?

14 A. Well, some have not yet established trusts. These
15 are cases -- I believe they're cases that have not been
16 -- no. Yeah. Pittsburgh Corning doesn't have a trust.
17 It hasn't been a confirmed plan. W.R. Grace doesn't have
18 a formed trust. So, not all of them have trusts.

19 Q. But Pittsburgh Corning has an agreement to fund
20 four billion or so dollars to pay claims?

21 A. I'm not familiar with the details of the plan. I
22 haven't worked on the case in some time.

23 Q. W.R. Grace, we heard earlier in this week, has
24 over \$3 billion in its proposed trust.

25 A. It was formed with about \$3 billion. That's what

Cross - Peterson

1 I do know.

2 Q. NARCO: Billions of dollars?

3 A. I don't recall.

4 Q. So those are not up and running yet.

5 A. Yes, that's all true.

6 Q. In any event, you estimated the Mesothelioma
7 liability for each of these companies.

8 A. Yes.

9 Q. And when you were doing that, you were estimating
10 their liability for the same subset of the Nicholson
11 population. Those claims were going to come from the
12 same population; correct?

13 A. Let me -- let me help you here. All those
14 forecasts were based on the Nicholson method and actual
15 Nicholson forecast. So the incidence numbers were the
16 same. But my forecast for each is different, because
17 each of them has a propensity to sue estimate for the
18 future and that varies from case to case, and the people
19 who sue are different from case to case.

20 Q. They are the projected people who will have the
21 propensity to sue are within the Nicholson population.

22 A. Yes, that's formally the way. As I testified
23 yesterday, Nicholson appears, possibly, to be
24 underestimating the number of claims. So the numbers
25 actually may be greater than what we show here, if that

Cross - Peterson

1 is the case. We use Nicholson, as I said, conservatively
2 because, if anything, the number of the incidence in
3 these years is going to be greater than Nicholson's
4 forecast, which means that there may be more claims.

5 Q. I was going to ask you about that. It will -- and
6 these include the top tier defendants that you described
7 earlier.

8 A. I'm not going to hunt them down. I'll take your
9 word for it.

10 Q. All right.

11 A. Well, excuse me. The eight that filed
12 bankruptcies? Is that the ones to which you're
13 referring?

14 Q. Yes. And in those cases you also estimated a
15 propensity to sue for each of those defendants, didn't
16 you?

17 A. Yes.

18 Q. And those defendants were named in large numbers
19 of cases before they filed for bankruptcy, weren't they?

20 A. I'm sorry. Could you repeat that?

21 A. The propensity to sue those defendants was high
22 relative to other defendants, was it not?

23 A. I don't understand your question.

24 Q. Those defendants received a lot of the claims from
25 the Nicholson incidence population.

Cross - Peterson

1 A. Well the propensities differed from case to case.
2 Sometimes it's higher. Sometimes it's lower. It's based
3 upon the conjunction of the number of claims that have
4 been filed in the past and the particular years from
5 which we calculate the propensity to sue. These are
6 forecasts that are made at various different times. The
7 Nicholson curve is now going down. In the 2000s it was
8 relatively flat, even going up. So in some of these
9 cases -- in National Gypsum, the incidence forecast by
10 Nicholson was going up.

11 Q. But the propensity to sue is a percentage of the
12 Nicholson forecast, whatever the number might be in any
13 given year.

14 A. It is the number of claims against that company
15 for Mesothelioma as a fraction, basically, as a percent
16 of the Nicholson forecast for the years in which you're
17 looking. So it's going to differ from case to case,
18 depending upon the number of Mesotheliomas that were
19 filed.

20 Q. Sure.

21 A. So the propensity to sue varies quite widely from
22 case to case and over time often for the same defendant.

23 Q. But at least as it relates to what we refer to
24 here as "top tier defendants," Owens Corning, Pittsburgh
25 Corning, Babcock and Wilcox, Armstrong --

Cross - Peterson

1 A. I would not regard Babcock and Wilcox as a top
2 tier defendant.

3 Q. Well they were on your list that we looked at
4 earlier today.

5 A. Well, they never were.

6 Q. But for those defendants, you projected that the
7 propensity to sue would increase into the future after
8 the -- after their bankruptcies were filed.

9 A. Sometimes I forecast increases; sometimes I
10 haven't. The experience has been that propensities to
11 sue have increased for almost everybody. The number of
12 claims filed annually is going up. It appears to still
13 be going up. Advertising is very effective.

14 Q. But the point is -- when those companies went into
15 bankruptcy, you said they were going to be receiving even
16 greater -- an even greater percentage of the Nicholson
17 population going forward into the future.

18 A. Sometimes I forecast that; sometimes I don't.
19 There's not a general rule on that. It's based upon the
20 experience of a particular defendant.

21 Q. Okay. But at least in all of those cases, that's
22 what your reports say. You said that the propensity to
23 sue would increase into future years.

24 A. That's not a correct statement.

25 Q. Oh, really?

Cross - Peterson

1 A. In every report? No. That's false.

2 Q. I didn't say every report. I said the reports of
3 top tier defendants.

4 A. You said -- I don't know that. Sitting here right
5 now, I don't know that. I don't think -- I'm not sure I
6 said that for Armstrong. But, you know, if you want to
7 go through them all, you can go through them all.

8 Q. Well, we've got --

9 A. But I think most of the forecasts that were done
10 in the 2000s, because claims have been going up so much,
11 that despite the fact that the incidence, according to
12 Nicholson is relatively flat, the propensities to sue are
13 going up. That may be an artifact. If, in fact,
14 Nicholson under-projecting claims now, then you would be
15 getting increasing propensities to sue, primarily because
16 there may be a growing disparity between what Nicholson
17 forecast and what the actual incidence is. That could be
18 an artifactual problem from -- if there is an inaccuracy
19 in Nicholson that would create that fact.

20 Q. But you understood, didn't you, because you were
21 -- became familiar with these companies is that many of
22 them, their products were used in the same occupations
23 and industries where Garlock's products were used.

24 A. Many? Yes. Well, asbestos claimants tend to be
25 exposed to lots of different companies' products.

Cross - Peterson

1 Q. Now you said that you had not undertaken any
2 analysis to determine the number of trusts that claimants
3 against Garlock would seek recovery from. You have not
4 undertaken that analysis?

5 A. I don't know whether I said I hadn't. We've
6 looked at data that's been provided on the PIQ forms
7 about that. Beyond that, I don't think we've looked at
8 it. There is the DCPF data that's been provided in this
9 case and we've looked at that. So we've looked at those.

10 Q. And the DCPF. That's just ten of the trusts;
11 right?

12 A. Yes.

13 Q. And you continue to be an expert claims estimation
14 expert for many of these trusts?

15 A. Some.

16 Q. So you've actually got the data on the number of
17 claims that these trusts receive.

18 A. Some.

19 Q. Okay. And in fact, the propensity to sue has
20 increased for all these trusts, hasn't it?

21 A. Generally, it has. Yes.

22 Q. And they're paying more claims than you projected
23 they would pay.

24 A. The one doesn't follow from the other. For some
25 of these, the fraction of claims paid have gone down as

Cross - Peterson

1 the claims have gone up. So it isn't a general rule. I
2 think I probably would be uncomfortable making --
3 answering your question yes or no because of that.

4 Q. You talked about your involvement in these
5 bankruptcy cases. You helped write the rules for the
6 trust -- for the trust procedures in many of these cases,
7 didn't you?

8 A. I contributed to the development of the forms of
9 these that were used initially. Over the years I don't
10 have much of a role in drafting the TDPs, other than I do
11 participate in suggesting to the parties what may be
12 appropriate values to be attached to the various
13 categories of diseases. I still do that frequently.
14 It's kind of what the role has become, a comment here and
15 there. But I wouldn't say it's a very active role in the
16 writing of those rules. They're pretty standard case to
17 case.

18 Q. You're certainly familiar with the TDP; correct?

19 A. I'm certainly familiar with the general form, but
20 they differ case by case. I wouldn't claim to have
21 thorough knowledge of every one or even, necessarily, any
22 one at this point.

23 Q. It's reasonable to expect, isn't it, that many
24 other defendants, particularly these trusts, will be
25 paying the same claims asserted against Garlock?

Cross - Peterson

1 A. Yes.

2 Q. In fact, in large numbers. We saw over 40
3 defendants back there. It's reasonable to expect that
4 many, many of those claimants will assert claims against
5 Garlock -- will assert claims against a lot of those
6 trusts.

7 A. Many claims -- the plaintiffs may be able to get
8 compensation from a number of trusts. But, remember,
9 Dr. Bates has told us that the average value of a
10 Mesothelioma claim, if it goes to trial, is over \$4
11 million. So, in aggregate, they don't come anywhere near
12 his estimates of the values of these cases.

13 Q. The trusts, at least from the standard TDP, they
14 apply exposure requirements that are more stringent than
15 exposure requirements in the trust -- in the tort system,
16 don't they?

17 A. As a general rule, I think that's correct. Yes.

18 Q. And you -- in 2009, you also rendered another
19 report in W.R. Grace, and you talked about the TDP in
20 W.R. Grace. You said, "They follow the same standard
21 form used for almost every asbestos trust created
22 since 2002. To assure that funds will remain
23 available to pay claimants, the TDP and bankruptcy
24 plans in which they are embedded, together with
25 the Bankruptcy Code Section 524(g), provide a

Cross - Peterson

1 broad set of protections of the financial
2 interests of the trusts, debtors, insurers and
3 other parties who contribute assets to the trust.
4 To receive compensation, claimants must show
5 'meaningful and credible' exposure to asbestos for
6 which Grace has responsibility."

7 Do you remember that?

8 A. Yes.

9 Q. Okay. That's a true statement?

10 A. I assume it is. I haven't looked at that TDP in a
11 long time.

12 Q. But that's the standard set. And this -- you
13 could take this into consideration when you estimate
14 future claims for the trust.

15 A. No.

16 Q. You don't consider the TDP when you estimate the
17 trust, what claims the trust will receive?

18 A. Oh, I do it for the trust.

19 Q. Right.

20 A. Not in estimation in this case or in bankruptcy, I
21 typically don't. No.

22 Q. Now you've referred to -- here what we've done is
23 we've got a graph that shows the top line. That's the
24 Nicholson incidence curve. And we have a line below it
25 which is the incidence curve used by Dr. Bates.

Cross - Peterson

1 A. I'm sorry. The dash line?

2 Q. No. The --

3 A. Oh, the blue below?

4 Q. Correct.

5 A. Yes.

6 Q. And the brown squiggly mark, that's the SEER data
7 that you talked about earlier.

8 A. That's one of the SEER lines. Yes, it appears to
9 be. I'd have to compare them, but I'll take your
10 representation.

11 Q. Your argument is that the Nicholson curve is
12 accurate because it matches up with SEER. Or maybe even,
13 you said, SEER is a little bit higher than the Nicholson
14 curve. Is that right?

15 A. Well I showed that comparison in my -- both my
16 report and my demonstratives yesterday. You've only run
17 this from 1990. I've gone back to 1982. And, yes, it
18 differs year to year because SEER is a sample.

19 Q. Right.

20 A. So it's -- the data, as you see, jumps around. If
21 you were going to draw a line through it, it would be
22 very close to Nicholson.

23 Q. You understand, don't you, that Nicholson was not
24 trying to estimate the incidence of Mesothelioma in the
25 general population. He was estimating incidence of

Cross - Peterson

1 people who were occupationally exposed in certain
2 industries and occupations; correct?

3 A. Yes. He tried to capture all of the industries
4 and occupations that would have had meaningful exposures
5 to asbestos. I think it was somewhat incomplete, but he
6 got them all. He certainly got the vast majority of
7 them.

8 Q. So, if --

9 A. And he didn't forecast family exposures.

10 Q. But it's misleading to compare SEER to Nicholson,
11 isn't it, because SEER includes both male and female
12 Mesothelioma diagnoses?

13 A. I don't agree with either your premise or your
14 conclusion.

15 Q. Well you agree that the Nicholson forecast is
16 employment-based; correct?

17 A. It is occupationally-based. Yes, occupation
18 exposures.

19 Q. And you understand that there were very few women
20 in the labor force and occupation data that Nicholson,
21 Perkle and Selikoff was using?

22 A. If they were there, they're in his forecast.

23 Q. They were not present -- women were not present in
24 the historical times and periods in those occupations and
25 industries.

Cross - Peterson

1 A. I don't accept that.

2 Q. Pipefitters?

3 A. I don't agree with that. I don't know your source
4 for saying that.

5 Q. Have you examined the claims that are asserted
6 against Garlock to determine how many of the people who
7 suffered from Mesothelioma were women?

8 A. I don't know that I've looked at it specifically
9 for Garlock. I've looked at -- there are a substantial
10 number of women, and a lot of them are occupational
11 exposures. And a lot of them are for family exposures:
12 Wives that get Mesothelioma because their husband brought
13 asbestos fibers home on their clothes. Both occur.
14 Their children. Their girls get Mesothelioma for the
15 same reason.

16 Q. So I take that as a no, you have not studied
17 Garlock's data to see.

18 A. I haven't looked at it specifically there, but I
19 know that I expect that there would be some women in
20 there in the tune of some appreciable but low percentage
21 of all the claims.

22 Q. How many women were in all the forecast that you
23 did for these 40-some companies?

24 A. I don't understand your question.

25 Q. How many women were included in the claims

Cross - Peterson

1 forecast? You had the data.

2 A. They would be whatever percentage of claims that
3 happened against Garlock -- each of those companies in
4 the past, we're assuming, basically the same fraction but
5 we don't look at it; we don't disaggregate it that way.

6 Q. But you didn't study that, so you don't know?

7 A. I've looked at it from time to time, but it's not
8 a basis for forecasting. Unfortunately, women can get
9 Mesothelioma.

10 Q. But the point is, there were very few women who
11 were in the Nicholson population.

12 A. I can't speak to that.

13 Q. Well that's something you would be interested in,
14 wouldn't it, since you're comparing Nicholson to SEER,
15 and SEER includes a very large number of women. If you
16 were going to make that comparison, wouldn't you have to
17 understand that?

18 A. My interest is specifically that I would like -- I
19 need a forecast of what is going to be the number of --
20 the number of people who get Mesothelioma in this country
21 in the future and in the past so I can calculate what the
22 past experience is. Nicholson provides that. Nicholson
23 is a forecast of both the past and the future
24 propensities to sue out to 2030. And as I've described,
25 we've extended it beyond then.

Cross - Peterson

1 It is a proxy for using -- for estimating --
2 replicating what the past was and the future. There are
3 lots of criticisms that have been made over the years of
4 the limitations in the way that Dr. Nicholson forecasted
5 his claims. One of them may be that there aren't enough
6 women in it or whatever else. There are women in it; he,
7 specifically, says that in his report. There are
8 criticisms like that. Or that he got the ages wrong, or
9 something like that. And of some of them may or may not
10 have truth to those criticisms.

11 But the point is, if you look at my report and the
12 data I presented over the full course of time, you see
13 that Nicholson has remarkably captured what is the actual
14 number of Mesotheliomas occurring in this country year
15 after year. He's done it for 30 years now. That gives
16 me confidence that his forecast for the future is going
17 to be very similar to what the actual number of
18 Mesotheliomas in this country is.

19 Now you can try and nitpick and criticize and say,
20 oh, this or that, and maybe those -- maybe one error
21 causes his number to be too high and one too low. But
22 for whatever reason, he is a scientific study that has
23 been compared with the evidence available and it has been
24 masterfully confirmed. And if you want to know what's
25 going to -- if you're trying to see the future, like

Cross - Peterson

1 we're trying to do, the best source for seeing the future
2 is to look at Nicholson, because he has shown for 30
3 years he's been right. I don't know anyone else that has
4 been right for 30 years other than perhaps my wife. Not
5 45 years ago; she made a very serious mistake then.

6 Q. What seems to be lost in your analysis,
7 Dr. Peterson, is that Nicholson wasn't trying to predict
8 the incidence of all Mesothelioma in the United States.
9 He was predicting the persons occupationally exposed in
10 certain industries.

11 A. I know that --

12 Q. Okay.

13 A. -- but I don't really care, because I'm not
14 interested in what was in Dr. Nicholson's mind. What I'm
15 interested in is he's -- for 30 years, he has told me how
16 many Mesotheliomas there are in the country. And if I
17 want to know what's in the future, I don't have a better
18 source for that. And so that's why I use it. I hear all
19 these criticisms. Dr. Bates says a couple of times he's
20 made it better. Dr. Vasquez says he's made it better.
21 But they have not done as well, and they have not been
22 tested for 30 years, and they've not been peer reviewed.
23 This is the best source and it's a remarkable source. I
24 wish everything that I had to rely upon were that
25 credible.

Cross - Peterson

1 Q. If we were to deduct the women from the SEER data,
2 then you get -- you get a population that is just above
3 Dr. Bates' curve. Do you see that?

4 A. Why in the world would you do that?

5 Q. I think we've just --

6 A. Men and women were exposed in his population.
7 He's forecasting both men and women. You test it with
8 men and women. I've heard apples and oranges mentioned.
9 Here, that's apples and oranges.

10 Q. No.

11 A. It's a forecast made for all people, both genders,
12 and you're going to say we're going to compare it to men
13 only. That's not an appropriate test.

14 THE COURT: Let's you-all not waste your time
15 arguing with each other. Let's get on to something.

16 BY MR. CASSADA:

17 Q. Well, do you see the curves?

18 A. I do see the curves.

19 Q. Okay. Those are your projected incidence rates
20 for each of the bankrupt co-defendants mentioned here:
21 Armstrong World Industries, GAF, Fibreboard, Owens
22 Corning, U.S. Gypsum, W.R. Grace -- excuse me, that's
23 your propensity to sue.

24 A. I'll accept your representation.

25 Q. Okay. And you see it goes up very, very sharply

Cross - Peterson

1 right there at the beginning, indicating an apparent
2 belief that the propensities to sue would increase, and
3 then they come down. So there is a lot of overlap among
4 those companies; right?

5 A. What do you mean "overlap?"

6 Q. I mean this demonstrates, doesn't it, that the
7 claimants -- there are going to be many, many common
8 claimants among these companies.

9 A. Oh. Well you mean the same people filed claims
10 against multiple trusts? Is that what you're saying?

11 Q. Yes.

12 A. Well, yes. You don't need this to know that but,
13 yes.

14 Q. And against Garlock as well.

15 A. Of course. Because people that were exposed to
16 Garlock were exposed to other products often. Not
17 always, but often.

18 Q. Let me ask you about the average settlement values
19 that you've used for Garlock in your estimation report.
20 Now you've conceded that Garlock's average settlement
21 values were increased during the 2000s, at least in part
22 of the bankruptcies of co-defendants.

23 A. I'm sorry. Could you repeat the question? I was
24 thinking about this chart.

25 Q. You've conceded, haven't you, in your estimation

Cross - Peterson

1 report and in your testimony in this case, that Garlock's
2 average settlement values were impacted to some degree by
3 co-defendant bankruptcies.

4 A. Well I think that was one of the -- they certainly
5 went up in the 2000s. I think that contributed to it.
6 Yes.

7 Q. Do you -- and you're aware that \$30 billion in
8 assets has been paid into the trust to fund payments to
9 claimants; right?

10 A. About that. Yeah.

11 Q. Okay.

12 A. Yes.

13 Q. Okay. But you've not factored into your report
14 that Garlock's settlements would decrease in the future
15 on account of the tens of billions of dollars in payments
16 made by trusts to current and future Mesothelioma
17 claimants who will be asserting claims against Garlock.

18 A. I don't think I actually agree with that.

19 Q. Well explain to me how you disagree with it.

20 A. Well I calculate the average payment rate --
21 payment amount with Garlock over the period 2006 to 2010.
22 And over that period of time, a number of the trusts have
23 came in and they -- actually, in that three-year period
24 -- there's a three-year period in there that more money
25 was paid out by trusts in those years than in the sum of

Cross - Peterson

1 the prior 19 years by all trusts, as nearly as I could
2 determine. So, there, the forecast that I'm making is
3 based upon a world in which whatever effect the return of
4 the trust has already been reflected to some degree in
5 the data and settlements for Garlock.

6 So that's why, no, I -- that's a part of the
7 forecast. It's -- you know, whatever impact it's had,
8 it's already begun. It's in the data and in the data
9 that I'm using. And those payments begin as early as
10 2006 and really not using a period that excludes all
11 those available defendants.

12 Q. Now, in order to reach that conclusion, you would
13 have to have information about whether the claimants
14 against Garlock -- claims against the trust were being
15 paid on claims that Garlock was simultaneously paying;
16 correct?

17 A. No.

18 Q. Well you wouldn't expect if the trust were paying
19 a backlog of claims that Garlock had already paid, you
20 wouldn't expect those claim payments to have any kind of
21 downward pressure on Garlock's settlement values, would
22 you?

23 A. Well we're looking at the payments made in 2006
24 through '09. And so there are claims, certainly, that
25 were -- and Garlock settled most of its claims within a

Cross - Peterson

1 year or two of having filed them. So they're paying
2 relatively quickly. So these tend to be relatively
3 recent claims, recent filings, and those are people that
4 the trust was paying. So some of the trust payments were
5 for older claims, yes. But the people that Garlock was
6 paying, for the most part, would be people who could have
7 been paid by the trusts.

8 Q. Who could have been paid. But it would be
9 important to know whether they had in fact been paid;
10 correct?

11 A. I don't think so.

12 Q. No.

13 A. For two reasons. One is that there's never been a
14 demonstration that the payments by the trusts have
15 affected the payments by solvent defendants. We've
16 talked about that, and I showed that data yesterday.
17 Second, the -- if they got paid, they got paid. It's in
18 the data. It's part of the -- whatever effect it has,
19 it's taking effect.

20 Q. But in order to determine whether any effect has
21 taken effect, don't you actually have to look at the
22 claims and look at the timing of the claims against the
23 trust and Garlock?

24 A. No. I just assume that whatever effect it is, it
25 is the same in the future as it's been now.

Cross - Peterson

1 Q. Okay. You made that assumption?

2 A. And I don't -- and to the degree that there may be
3 additional trusts coming along. First of all, these
4 trusts are paid -- they pay out most of their money early
5 on. And they will continue to pay it, but not nearly as
6 much in subsequent years as they've paid now. And again,
7 there's just no demonstration that that's a significant
8 impact upon what any solvent defendant pays.

9 Q. But you didn't do any research on the underlying
10 claims to test whether they would have had been impacted
11 by the payments from the trust. You simply made that
12 assumption.

13 A. Right. The assumption -- it isn't done on a case
14 by case analysis. I don't look separately to what's paid
15 to men and women. I don't look separately -- I have
16 looked separately to what's paid to people in Michigan as
17 opposed to California, but the assumption is basically
18 that that contributes to the grand mean across all
19 claimants. Whatever they get may differ from person to
20 person, but I'm not doing an individual forecast here.
21 I've not been instructed to do an individual forecast.
22 The Court hasn't asked for that. They want an aggregate
23 forecast.

24 Q. You've not analyzed, have you, whether the trust
25 confidentiality and claims deferral provisions have

Cross - Peterson

1 impacted the relief that Garlock may have received from
2 trusts, have you?

3 A. I have no expectation it would have affected the
4 impact and so I haven't looked at it.

5 Q. Okay. Now you were -- were you in the courtroom
6 yesterday when Mr. Patton testified?

7 A. Some, but not all.

8 Q. Did you hear Mr. Patton, who was involved in
9 drafting trust distribution procedures, testify that the
10 confidentiality provision has the effect of increasing
11 plaintiffs' leverage in negotiating settlements with
12 other defendants?

13 A. Trust confidentiality provision or --

14 Q. Yeah.

15 A. Or confidentiality provisions in general?

16 Q. The trust confidentiality provision.

17 A. I don't agree with that.

18 Q. You were -- you heard the testimony, but you don't
19 --

20 A. I don't recall that. I was preparing for my own
21 testimony.

22 Q. Okay. You did not consider, did you, the impact
23 of trust claims on trial outcomes because you don't
24 consider trial outcomes in estimating settlements.

25 A. Well, of course, trial outcomes are part of the

Cross - Peterson

1 overall amount that they had to pay to the degree there
2 were trials that either ended up in a defense verdict or
3 plaintiff's verdict. That's part of the data upon which
4 I'm forecasting, but I did not look separately at how
5 trust payments affect the trial outcomes. I mean we
6 actually looked at how much Garlock paid in cases where
7 we knew, both, what they paid and what the verdict was in
8 that case, and I testified about that. If there are
9 setoffs or credits for trust payments, it would have been
10 reflected in that data. But that's the -- that's what
11 actually happened. We didn't theorize about it like Dr.
12 Bates does.

13 Q. So you looked at the data, but you didn't look in
14 the underlying cases to see what was at work.

15 A. Didn't need to. It's in the data. It's already
16 there.

17 Q. Now, you've said that you now believe that at
18 least a dozen factors increased Garlock's settlements
19 during the 2000s?

20 A. Yes. And I had several pages of discussions of
21 that and spent a fair amount of time in my direct
22 testimony yesterday.

23 Q. Sure. And you believe it's impossible to isolate
24 or quantify the impact of any of those factors?

25 A. I think that's right.

Cross - Peterson

1 Q. But in fact, I mean, you didn't even try to do
2 that, did you?

3 A. I try not to do the impossible.

4 Q. Okay. So you didn't attempt to quantify or
5 analyze the impact of any specific factor on Garlock's
6 settlements?

7 A. I don't know of any valid way. When you've got
8 dozens of events happening simultaneously, it's difficult
9 to isolate the effect of any one and make a confident
10 comment on it.

11 Q. Okay. So you did not analyze whether those
12 factors that you say affected Garlock's settlements would
13 remain the same or change?

14 A. Well, that wasn't my goal. The goal was to
15 understand what happened. And most of the effects have
16 changed the litigation, as I said, so that's why the
17 litigation in 2000s, at the time they went into
18 bankruptcy, is different than it was in the 1990s. It
19 may be different, and probably will differ in some ways,
20 in the future. It hasn't changed much since the
21 mid-2000s. It's been an area of rather remarkable
22 stability. Only two defendants went into significant --
23 significant defendants went in that I've had to get
24 involved with after that period of time, and that's
25 Bondex and Garlock. Neither one of them was a major

Cross - Peterson

1 defendant.

2 Q. So, for your purposes, you've assumed that the
3 future will look just like the period you've chosen as
4 your calibration period?

5 A. The future -- it's a general rule for people who
6 do forecasts that the future is going to be most like the
7 recent past. Sometimes you know that's not the case and
8 you adjust for it. But I can't tell you what all the
9 litigation events are in the future. I can suggest to
10 you that it probably won't be federal legislation. I can
11 tell you there will probably be a continuation of some
12 increase in Mesothelioma claims. There is likely to be
13 some increase in the -- even greater increase in the
14 number of lung cancer claims. And there may be some
15 return of the nonmalignant claims. I can say those
16 things. There's some reason to think that those trends
17 are happening and that may happen. And if that happens,
18 Garlock's liability would be even greater.

19 Q. Now, when you're -- these trends you're talking
20 about now. Are you talking about trends in the tort
21 system?

22 A. Yes. Well, but it's the -- yes, because that's
23 what we're forecasting here. But those also are
24 reflected in the claims filings with trusts, too. That's
25 one of the reasons, since the trusts have gone in --

Cross - Peterson

1 virtually every trust payment percentage has gone down
2 because there have been more claims filed than I or
3 anyone else projected at the time. Once again, it
4 demonstrates that my forecasts, while good, tend to
5 underestimate the severity of the liability issues in the
6 future, and that's a consistent pattern for me and
7 everybody.

8 Q. So you choose a calibration period in order to
9 determine the variables for your --

10 THE COURT: Before you get into that, let's take a
11 break and come back about 11 and then try to wrap up as
12 quick as we can.

13 (Off the record at 10:51 a.m.)

14 (On the record at 11:03 a.m.)

15 THE COURT: Have a seat.

16 BY MR. CASSADA:

17 Q. Dr. Peterson, I was curious about your analysis of
18 the historical average settlement values of Garlock for
19 Mesothelioma claims. I was looking at your report
20 yesterday -- actually, these were the slides used during
21 your direct testimony -- and I noticed something
22 peculiar. This is a slide from your direct, slide 13,
23 and you have here the historical sort of trends on
24 average settlement values for Mesothelioma claims for
25 various defendants. I believe Garlock is this black

Cross - Peterson

1 line, this heavy black line, that appears on the bottom.
2 And as we go along, we get to 2010 and there's this
3 sudden huge spike in the average settlement value. Do
4 you see that?

5 A. Yes.

6 Q. Okay. And that was totally different from what
7 the data showed. Garlock didn't have a spike in 2010. I
8 was trying to understand exactly what you were showing.
9 Are you trying to give the impression that Garlock's
10 values spiked in the year it filed its bankruptcy?

11 A. Its data showed that in 2010 its average Garlock
12 Mesothelioma payment was greater than in several
13 preceding years. There weren't as many settlements in
14 that year, so there was probably some instability to that
15 number. There may have been something about the kinds of
16 cases that got resolved just before the bankruptcy.
17 Certainly, Garlock knew it was going to go into
18 bankruptcy. Perhaps some of the plaintiffs' lawyers had
19 to prove that idea. That's speculation. I don't know
20 why.

21 Q. Yeah. I saw it again on slide 23. I'm looking at
22 the data and I see these approved settlement values. And
23 we get to 2010 and, boom, huge spike in the average
24 settlement value.

25 A. Yes.

Cross - Peterson

1 Q. That's not what the data show?

2 A. That's what the data show. It isn't what
3 Dr. Bates thinks the data show, because he's changed the
4 data that were available in the May 2011 database and
5 changed it by events that happened after the bankruptcy
6 which, as I testified yesterday, is, in my opinion,
7 inappropriate. He moved claims of larger value out of
8 that year to prior years.

9 Q. Well we looked at the data, and here's what we
10 discovered. And I've got here slide 29. This shows in
11 this, the sort of yellowish -- brownish-yellow color,
12 those are the average settlement values you used?

13 A. Yes.

14 Q. We discovered that in 2010 you inserted several
15 judgments that Garlock had -- had been rendered against
16 Garlock in the early to mid-2000s and paid by Garlock
17 several years before 2010.

18 A. The data we have show they were paid in 2010.

19 Q. You took those judgments and you put the payment
20 of those judgments in 2010, and it spiked the average
21 settlement value.

22 A. The data that were reflected in 2010 are payments
23 made in 2010.

24 Q. But they don't. It's not in the data,
25 Dr. Peterson.

Cross - Peterson

1 THE COURT: Well you-all arguing about it is not
2 advancing the ball very much.

3 MR. CASSADA: I'm just concerned about it, Your
4 Honor, because it creates an impression that's untrue
5 that what happened in Garlock stock --

6 THE COURT: You need to ask him questions and then
7 you can -- you can respond and get a rebuttal.

8 BY MR. CASSADA:

9 Q. So that's your interpretation of the data?

10 A. It's the actual data.

11 Q. Let's -- we were about to talk about the
12 calibration period. The calibration period is -- that is
13 term you use for the years that you pick from which you
14 choose your variables for your formula? Propensity to
15 sue, payment percentage, and average settlement value?

16 A. It's the periods we use in this case. They're all
17 the same. Yes.

18 Q. Okay. And your calibration period here is 2006 to
19 2010?

20 A. Yes. Obviously, the part of 2010 before the
21 bankruptcy.

22 Q. So the idea there is that you look at the average
23 propensity to sue and the average payment percentage and
24 average settlement value.

25 A. Yes.

Cross - Peterson

1 Q. And those are the variables that go into your
2 model?

3 A. That's correct.

4 Q. Unless you decide that you're going to change
5 them; you're going to make some adjustment to them?

6 A. We don't know of any way we've changed those
7 variables, unlike Dr. Bates.

8 Q. Well you might -- you might adjust them because
9 you think you might look at it and say, well, this result
10 doesn't seem plausible to me so I'm going to change this
11 variable?

12 A. No, I don't do that.

13 Q. Okay. You testified in your deposition that the
14 reason you chose this period was because it -- you called
15 it "temporal propinquity?"

16 A. Propinquity. Yes.

17 Q. That was the sole reason you picked that period?

18 A. No.

19 Q. That was the principal reason?

20 A. It was a reason.

21 THE COURT: What was that word again?

22 THE WITNESS: Propinquity. Closeness.

23 THE COURT: You're keeping up with Mr. Swett.

24 THE WITNESS: I can't compete in that domain.

25 BY MR. CASSADA:

Cross - Peterson

1 Q. Now you acknowledge, though, that if the
2 settlement environment is not going to be the same, it
3 would be improper to assume that the settlement behavior
4 in that environment is going to be the same in the
5 future; correct?

6 A. Fifty pounds, and all the settlement environment
7 might differ.

8 Q. That's the principle you were applying when you
9 were relying on the bankruptcy wave. You were saying
10 these defendants had an average settlement, but I think
11 that's going to multiply in the future because of the
12 bankruptcy wave.

13 A. I don't think I followed your question.

14 Q. It would be improper, wouldn't it, to rely on data
15 from a calibration period if the environment were going
16 to change in the future in ways that might change the
17 settlement behavior of the parties?

18 A. It would be better to look at how, if you know --
19 if you have a good reason to believe that the future will
20 be different in some way than the past, then it would be
21 useful to investigate that. And what you do about it
22 depends upon the change. I can't answer that in the
23 abstract.

24 Q. I mean, one of the things that you changed during
25 your calibration period is you decided you weren't going

Cross - Peterson

1 to use the average propensity to sue; correct? That was
2 not your preferred case.

3 A. I used it. I used it for both of my forecasts.
4 My primary and my secondary. For my primary -- there are
5 two -- for all of these variables there are two factors
6 that you see in this period of time. One, it gives you
7 the absolute value, what level are the claims at? The
8 second is, has it changed? And change is a property of
9 the propensities to sue. If it's changing, you would --
10 you would be inappropriate, in my opinion, to say that,
11 oh, this pattern that we see in the data is all of a
12 sudden going to disappear unless there's some really good
13 reason why you think it's going to disappear.

14 And so if you're trying to move the -- extrapolate
15 from this six-year period into the future, the two things
16 you want to do is you want to deal with the level of
17 claiming to make it consistent with what the past was.
18 And, also, say to the degree there is some trending, to
19 use that trend. There's a third reason why we made the
20 adjustment that we did for our preferred model and that's
21 that we didn't start the future claims at the level they
22 were. As you see from this chart, the claims filings in
23 the last three -- oh they're up steadily but the last
24 three years were up, and I don't start at that level. I
25 start at the average of the five years.

Cross - Peterson

1 So I start, in effect, at a stepdown for the
2 future. The future claim filings are going to be less
3 than they've actually been over the last three years, and
4 propensity to sue is going to be less, even though they
5 are increasing and they end up being higher. So what we
6 did, and I have a graphic both in my demonstratives in my
7 report. It shows we increased the propensity to sue
8 slowly for five years, and it basically just replicates
9 the pattern that you saw for the previous five years. So
10 for all of those reasons, I think that's the better
11 approach. But we do have an alternative forecast.

12 Q. So let's be clear, though, here. Propensity to
13 sue. That's a term that describes the number of
14 plaintiffs who choose to name Garlock in a suit in the
15 future.

16 A. Yes. As divided by the incidence, yes.

17 Q. And that's that decision that you said that
18 claimants make when they don't really know whether they
19 have a claim. They just name people in their lawsuits,
20 and then they learn the facts later.

21 A. I don't think I said what you just said I said.

22 Q. Well I thought I understood you to say that when
23 claimants sued Garlock, they often didn't know whether
24 they had a claim against Garlock. Maybe I've got that
25 wrong.

Cross - Peterson

1 A. I didn't say that.

2 Q. But in any event, this is the first step in your
3 formula. This is the number of claims that you run
4 through your formula in the future years. You multiply
5 this times the payments rate times the average settlement
6 value.

7 A. Nothing that you're -- oh, the chart on the left?

8 Q. This chart.

9 A. Oh, yeah. The chart on the left is what we use;
10 the numbers are below. As you see, our propensity to sue
11 for the balance of 2011, and we may use it for 2010 and
12 maybe 2011, was 58.8 percent. No, actually 57.6 percent.

13 Q. That was the average? Yeah, I'm sorry.

14 A. Which is lower than the actual propensities to sue
15 in 2008, nine and ten, but it is the average of five
16 years, and some of the data of the five years. So we --
17 it would be underestimating the likely future number of
18 claims because you're starting out with a big reduction.
19 And there's no reason to think there's going to be an
20 automatic big reduction. We start at that point, but we
21 raise it to basically get back to the level where it
22 ended.

23 Q. Right. So you saw a trend here and you decided
24 that it would be implausible to believe that that was --
25 that that trend wouldn't continue.

Cross - Peterson

1 A. I wouldn't say -- I wouldn't answer that -- say it
2 in the way you said it. No.

3 Q. But if you take a more -- a longer historical look
4 at the data, the trend disappears doesn't it? I'm
5 referring now to slide 19.

6 A. Well, but if you do that, you're going to start
7 out at the black line. If you're saying that's the
8 trends over the last five years, that's higher than where
9 we started anyway. That's more than 57.6 percent.

10 Q. Seems to me to be right at, excuse me, right in
11 the high 50s.

12 A. Yeah, but it looks higher to me.

13 Q. Okay.

14 A. You could have done it that way.

15 Q. Yeah.

16 A. I mean, I don't think it would make a material
17 difference.

18 Q. But the point is that you decided to --

19 A. It would have produced our alternative model. It
20 would have been the same -- in fact, that's what our
21 alternative model is, from 2003 to 2010. You're talking
22 about the black line here?

23 Q. Yes.

24 A. The black line is what we used, yeah, as our
25 alternative. Basically, it's the 2003 to '10 forecast.

Cross - Peterson

1 So we did that, too. We presented it. I think it's a
2 plausible model. I just don't think it's as good.

3 Q. Did you -- did you actually look at any underlying
4 data or information to determine whether there was a
5 basis for concluding that the propensity to sue Garlock
6 would increase in future years?

7 A. There aren't data that tell you what the future
8 is. They give you assumptions. You know, what -- you
9 look at the data to see what the past was. The data --
10 we have no data about the future. So I can't look at
11 data from the future in order to know what it's going to
12 be. No, I didn't do that.

13 Q. You're looking at the past and you're deciding
14 that there's this trend of an increasing number of claims
15 against Garlock. Did you look at the underlying factors
16 to see if that really was a trend?

17 A. Sure. I discussed a lot of that stuff in the
18 historic -- my testimony about historic matters.

19 Q. I'm sorry. Who did you discuss that with?

20 A. In court. My testimony.

21 Q. Okay. Do you agree that the propensity to sue has
22 a relationship to the payment percentage? In other
23 words, as plaintiffs push more and more claims at
24 Garlock, the percentage of claims that Garlock pays goes
25 down, and that's true for every defendant.

Cross - Peterson

1 A. I don't agree with your entire question and your
2 multiple -- your conjunctive question.

3 Q. Well, here's another -- let's talk about payment
4 rate. Here's another graph from your report. And this
5 is the -- this is the payment rate at the top. And these
6 are plotted directly out of your report from the data.
7 And, boy, if there's a trend, there's a trend; right?
8 It's going down. And we're looking at the broad part of
9 the data. We're looking at taking much more data into
10 account. Did you see a trend here?

11 A. Well, yeah, I looked at -- I discussed that.

12 Q. Okay.

13 A. I discussed it in the report and, I believe, I
14 discussed it in my testimony. There was a downward trend
15 in the average -- there was a downward trend in the
16 propensity in the payment rates and an upward trend in
17 values. And when you looked at them together, which is
18 the resolution rate, it's constant. It's a level of
19 great constancy. Now I don't know why that rate went
20 down. I do know that by including 2000-2001 you're
21 probably including inappropriate data there, and even
22 2002, because that was the era when Garlock made
23 inventory settlements. It paid lots of claims. It was
24 clearing out lots of claims, including Mesotheliomas
25 apparently, and so it was -- either it wasn't dismissing

Cross - Peterson

1 claims in those years, I don't know that, or it was just
2 resolving claims more favorably. It was more to get rid
3 of them. And when you do that, you tend to pay the lower
4 values.

5 So there is some relationship between the average
6 value that someone gets and the rate at which you're
7 paying claims, if the change occurs because you're paying
8 marginal claims. That could have been going on here.
9 But when you look at the last period of years, the total
10 amount of money on average that Garlock paid across both
11 those paid and it didn't pay is remarkably constant. And
12 that I presented both in my report and in my testimony.

13 Q. Now, we're talking about a different relationship
14 here. We're talking about the relationship between
15 propensity to sue and payment rate, and there is a
16 relationship. The more claims that get pushed at a
17 defendant, in this case Garlock, the lower the percentage
18 of paid claims. And that's what the data showed; right?

19 A. No. I don't believe your data showed that,
20 because the claims that get filed get paid somewhat over
21 time. I think there's no extrinsic evidence to suggest
22 in this case that the increasing number of claims reflect
23 poorer claims. In fact, the opposite is true. As a
24 result of the bankruptcy wave that you asked me about,
25 the plaintiffs' bar was paying more attention to Garlock.

Cross - Peterson

1 They improved their claims against them. They invested
2 in preparing claims against Garlock. They did such
3 things as commission Dr. Longo to develop his research
4 and then pay him to testify. All those reasons they've
5 improved the quality of their claim. That would increase
6 the value and that would draw more claims in. So there's
7 a lot going on here.

8 Q. Yes. Okay. So for payment rate there's no trend.
9 You just took the average which, actually, is a figure
10 substantially higher than the payment rate that prevailed
11 at the date of the petition, 58 percent. You took that
12 average but you trended up the propensity to sue.

13 A. The 58 percent is the average from the years 2003
14 to '06. As I just said, I believe it's inappropriate to
15 go earlier than that. So that's the actual average. The
16 propensity to sue that we use as the starting point for
17 our increasing is 57 percent. That's lower, and that
18 reflects the average payments in -- payment rates in 2003
19 -- 2006 to '10 when, as you note, they did go down. I
20 agree with that. They went down.

21 Q. Okay. The payment percentage went down and you
22 said that the propensity to sue went up. You saw a
23 trend, an upward trend on propensity to sue. You didn't
24 see a downward trend on payment rate. And as result, you
25 increased the number of future claims that were going to

Cross - Peterson

1 be paid. That was the effect of those -- of those
2 conclusions that you reached. You picked a calibration
3 period. You rejected the propensity to sue that you got
4 from that calibration period and you adopted the payment
5 rates.

6 A. Well if you want to address the issue of how many
7 people were forecasting would be paid, we have a graphic
8 in my -- in my demonstratives I presented yesterday. We
9 actually track over time both the -- in a very colorful
10 way the number of claims filed in each year in the past
11 and what we're forecasting for the future and the number
12 that got paid. And what we forecast for the future, if
13 you want to address that, that's perhaps a better thing
14 to do. And that shows that our rate of claims paid in
15 the future is consistent with what was in the past and
16 going down.

17 Q. But if you look at the data -- and this comes from
18 the two charts we had before -- it shows that during the
19 2000s, particularly in the latter half of the 2000s,
20 plaintiffs' lawyers were pushing more claims at Garlock.
21 But the number of claims that Garlock was paying was
22 remaining relatively constant. And the claims that were
23 being pushed at Garlock were being settled without cost,
24 without payment. I mean, that shows the relationship
25 between propensity to sue and payment rate. That's where

Cross - Peterson

1 propensity to sue goes up. Eventually, you reach a point
2 where you're bringing claims that never will identify
3 exposure to Garlock's product.

4 A. Well that's your argument, but it's speculation.

5 Q. And the payment rate goes down.

6 A. That's speculation.

7 Q. It's not speculation. Look. There's the
8 propensity to sue.

9 THE COURT: Well if you want to make your final
10 argument to him, great, but he's not going to agree with
11 it.

12 BY MR. CASSADA:

13 Q. Well this trend that you found in propensity to
14 sue added \$200 million to your estimate.

15 A. Let me make one other point. The 2010 is based
16 upon a limited number of claims that were addressed by
17 Garlock when it knew it was going to go into bankruptcy.
18 And, you know, I've seen in other cases in the past that
19 the future debtors in those cases make an attempt to
20 dismiss claims that they think they can get off the book,
21 reject them, close them. That's how this is calculated.
22 It's not based typically on a court dismissal. It's
23 based on Garlock, in its database, closing claims and
24 saying they're not paid; they're not payable. And they
25 may or may not get a release from plaintiff's lawyer on

Cross - Peterson

1 that.

2 There's a good incentive for a company knowing
3 it's going to approach bankruptcy to clean up its books.
4 So you're relying heavily on that. First of all, it's
5 less than a year's experience. We average the number of
6 claims in there and your trend doesn't. It's taking that
7 as if it were a full year. And secondly, it's cake
8 taking what I regard as an idiosyncratic and
9 unrepresentative year. It has the data, so we used it,
10 but I wouldn't base my argument on it.

11 Q. The trend that you found added \$200 million to
12 your estimate. Let's go to discount rate. You chose an
13 inflation rate in your -- in connection with your
14 estimate, 2.5 [sic] percent?

15 A. Yes. I think it's the same one Dr. Bates used.

16 Q. And you've got that -- that's from the CBO?

17 A. Typically, we get it from the Congressional Budget
18 Office, but there are a number of sources that have it.
19 It's a widely used rate.

20 Q. Yes. And then you had a discount rate for
21 determining net present value supplied to you, did you
22 not, by a different expert engaged by the Committee in
23 this case?

24 A. The Committee's expert on financial matters. Yes.

25 Q. Was that Charles McGraw of the Charles River

Cross - Peterson

1 Group?

2 A. Yes. I believe that's correct.

3 Q. And Mr. McGraw's discount rate is based on U.S.
4 Treasury securities; right?

5 A. It's a laddered -- laddering of those. You match
6 the years in which the claims will be paid and you
7 compare that. You look at the Treasury rates for that
8 period of time that would cover from the date of now
9 until that -- excuse me, that period.

10 Q. Now?

11 A. So over that period of time, what would be the
12 Treasury rates?

13 Q. Now the CBO, which you said was the source of your
14 inflation rate, also projects a risk-free discount rate,
15 doesn't it?

16 A. I'm not familiar with it.

17 Q. Well the CBO's risk-free rate, which Dr. Bates
18 used, is about 5.5 percent.

19 A. I would be surprised at that.

20 Q. Okay.

21 A. I think he said that there was some risk in his
22 rate.

23 Q. But you, in fact, relied on CBO for the discount
24 rates in just about all of your work for the top tier
25 defendants in the 2000s.

Cross - Peterson

1 A. I didn't rely on any source other than the
2 financial expert for the Committee. As a matter of
3 principle, I believe it's inappropriate to impose a risk
4 on -- a future risk on involuntary creditors like
5 asbestos claimants. And indeed, what you -- what that
6 inference is, is you're imposing a risk on future
7 claimants in order to benefit the debtor. That seems to
8 me doubly inappropriate. So in principle, I agree that
9 you couldn't. And there's literature in the accounting
10 area about how, for involuntary creditors who are not --
11 haven't bargained for any risk, to have a risk imposed
12 upon them is a wrong thing to do. And so I agree with
13 the choice that it should be a risk-free rate of return,
14 but the calculation of the particular number isn't
15 something I've done.

16 Q. Sure.

17 A. I believe you can question the source of it if
18 you'd care to.

19 Q. Okay. But on slide 22 here we show that you apply
20 a risk-free return. We'll look at your various reports,
21 in all of these cases all obtained from the same source
22 where you got your inflation right, the CBO, correct?

23 A. Typically.

24 Q. Okay. So these are risk-free rates of return?

25 A. No. I'm sorry. I never got my risk-free rate of

Cross - Peterson

1 return from the CBO. I was given it at the same source
2 as here. We get that from the financial advisors in each
3 case. What you've demonstrated with this chart is that
4 the economy's gone to hell, and I have no responsibility
5 for that.

6 Q. Yeah. But we are determining here a long-term
7 discount rate, but you've -- in this case, you have been
8 supplied a rate of return of 3.25 percent. You
9 understand, don't you, that there is an expectation of
10 inflation embedded in this risk-free rate of return, the
11 3.25 percent?

12 A. Well, yes. You take out two and half percent and
13 the real rate of the return is .750. I know that's
14 terrible. I've purchased Treasuries, and it ain't real
15 good. It ain't pretty, even the long-term rates.

16 Q. You took 2.5 percent out of that rate?

17 A. No, no. If you net the two things out. If you
18 net inflation in that.

19 Q. Well, that's the point. You've got your inflation
20 rate from CBO, and you've got your discount rate from
21 another source.

22 A. We may have gotten our discount rate and our
23 inflation rate. I don't recall where we got the
24 inflation rate, but there isn't any disagreement about
25 the inflation rate. The disagreement is about the

Cross - Peterson

1 discount rate. I've answered your question. I didn't
2 calculate it. I don't disagree with it. I understand
3 it. But it isn't a matter of my expert judgment. It's a
4 number that was given to me.

5 Q. But you're making the assumption that the
6 inflation rate embedded in this discount rate is 2.5
7 percent.

8 A. I'm just netting the two. I'm saying the effect
9 -- in a year, you would expect that \$100 would be worth
10 2.5 percent less. On the other hand, in a year you could
11 earn three and a quarter percent risk-free. That's a
12 simple example.

13 Q. Okay.

14 A. So the net effect, your real earnings, is .75.
15 That's what I'm saying.

16 Q. Okay. I think we're not connecting here. So you
17 understand that the interest rate that Mr. McGraw uses
18 for discount rate, it's a nominal rate roughly equal to
19 the real interest rate, plus an expectation about
20 inflation.

21 A. I'm not defending our expert or even very familiar
22 with his rate. He calculated a rate. He's reported how
23 his rate is. That's what we've used.

24 Q. But do you understand that the expected rate of
25 inflation embedded in that interest rate is much lower

Cross - Peterson

1 than 2.5 percent?

2 A. I don't know, and I don't have an opinion.

3 Q. But that's something that would be important to
4 understand, because you'd want to have -- wouldn't you
5 want to have the proper real discount rate?

6 THE COURT: Objection sustained. He said he
7 doesn't know. Let's go on.

8 BY MR. CASSADA: Okay.

9 Q. The real interest rate and the discount rate used
10 in all your past cases was around three percent; right?

11 A. I don't know.

12 Q. You don't know?

13 A. I haven't gone back to look at it.

14 Q. Okay but. That's in your report?

15 A. Whatever's in the report is in the report.

16 Q. And here we're applying a real discount rate of
17 only .75 percent?

18 A. No. It's the real rate of return. But if --
19 however you want to -- I've never heard a real discount
20 rate term by anyone other than you.

21 Q. Yesterday you criticized Dr. Bates for applying a
22 discount rate that you said stated a return on trust
23 assets. You stated it reflected a return on trust
24 assets.

25 A. I just said a return on assets. I don't remember

Cross - Peterson

1 if I put the word "trust" in there; I don't recall. I
2 may have.

3 Q. But you said that he was not applying a risk-free
4 rate of return.

5 A. That's what he said.

6 Q. Where did he say that?

7 A. I believe it was either in his deposition or his
8 report. I don't recall specifically. I doubt that he
9 got to that kind of rate without some risk. I am aware
10 of no risk-free rate of that level. If he does, I want
11 him to invest for me.

12 Q. So if you -- yeah. If you look at the
13 Congressional Budget Office report, you will see it has a
14 risk-free rate of return and it has the inflation rate
15 which you said might have been your source for the
16 referral --

17 A. I don't know that.

18 Q. Well Dr. Bates used the risk-free rates of return.

19 MR. INSELBUCH: Your Honor, I object to this.

20 This witness knows nothing about this. He's offered no
21 opinion about this.

22 THE COURT: Let's go on to something else.

23 MR. CASSADA: Okay. Your Honor, I brought it up
24 because he testified that Dr. Bates didn't use a risk-
25 free rate of return.

Cross - Peterson

1 THE COURT: Let's go on to something else.

2 BY MR. CASSADA:

3 Q. You testified earlier that you follow a scientific
4 approach and that your reports should be judged by the
5 standards of science; correct?

6 A. I said the former. I attempt to see and I hope
7 that my forecasts are accurate and confirmed, which is a
8 test of science.

9 Q. Now, in literally all of the reports that you did
10 during the 2000s, you projected that the -- that those
11 debtors were going to receive massive amounts of future
12 nonmalignant claims. Didn't you? I'm referring now to
13 slide 24.

14 A. I don't recall, except that's from my reports. I
15 know that we were forecasting at a point in time when
16 there had not been a -- we had not yet witnessed reliable
17 data about the possible change in the level of
18 nonmalignant claim filings such as in the era of 2000
19 that you have here the top part. We've used the standard
20 forecasts of looking -- method, looking at the past
21 claims and forecasting the future. It turns out there
22 was a substantial change in the filing practices of
23 exposed persons and plaintiffs. It was a discontinuity
24 of change. There's uncertainties in forecasting. That
25 was one that we got wrong.

Cross - Peterson

1 Q. Okay. But even as recently as 2009, you said that
2 W.R. Grace was going to get 584,000 future nonmalignant
3 claims.

4 A. We don't know how many they're going to get.

5 Q. That's what your forecast was.

6 A. We don't know how many they're going to get. We
7 don't know how many any of these people are going to get.

8 Q. The Committee asked Dr. Bates about his estimation
9 opinions for Garlock and EnPro prior to the bankruptcy
10 case. And you've seen those, haven't you?

11 A. I'm sorry. I've seen what?

12 Q. You saw Dr. Bates' estimation reports prior to the
13 bankruptcy case. The estimation?

14 A. Yes. Yes, I did. Thank you.

15 Q. And you saw, in there, that he predicted in 2004
16 that nonmalignant claims would be de minimis in the near
17 future.

18 A. A lot of things were de minimis in that report.
19 Yes.

20 Q. But in 2004, when you said that Federal-Mogul was
21 going to get a million nonmalignant claims, Dr. Bates
22 said they were going to go away and become immaterial.

23 A. He did a good job then.

24 Q. And this is from your W.R. Grace report, your most
25 recent one. And in there you were projecting almost \$2

Cross - Peterson

1 billion of nonmalignant claims from 2002 to 2039;
2 correct?

3 A. Yeah. As part of that -- oh, that's from 2002.
4 Yes.

5 Q. Sure.

6 A. Well, yes, this looks like it's from my report.

7 Q. Okay.

8 A. I don't know if that's NPV.

9 Q. So as late as 2009, you were projecting that \$2
10 billion of Grace's liability would be nonmalignant
11 claims. And we now know, I'm referring to slide 26, that
12 those claims -- even before you made those projections,
13 those claims had dwindled down to immaterial levels.
14 Garlock's experience was in 2006, it received some 4,400
15 and that that number was going down. In the last year
16 before its bankruptcy case, it received only 2,320
17 claims; correct?

18 MR. GUY: Your Honor, hopefully this will move it
19 forward. I remember in prior questioning I asked about
20 nonmalignant claims, and the objection was raised that
21 this case is about Mesothelioma claims.

22 THE COURT: Let's let him go ahead. Can you
23 answer the question? It was something of a speech.

24 THE WITNESS: Well I would just note that on this
25 you're not comparing Grace's nonmalignant filings in

Cross - Peterson

1 those years with claims that might have arisen. First of
2 all, you can't confirm this directly because there were
3 no W.R. Grace filings in those years. Secondly, you're
4 comparing them with a different defendant. I don't
5 regard this as a scientific test.

6 BY MR. CASSADA:

7 Q. But, I mean, the fact is Garlock's experience and
8 data you've gotten elsewhere shows that these claims you
9 were predicting simply did not exist.

10 A. For Garlock.

11 Q. You wouldn't have any reason to believe that they
12 would exist for Grace but not for any other defendant.

13 A. I don't -- none of this has happened yet. Grace
14 doesn't even have a formed trust yet. So I have no basis
15 for talking about the -- what might be the empirical data
16 for a company that doesn't have a trust for a disease
17 that's not pertinent to the estimation here. I would say
18 that whatever trends you see -- and I agree that the
19 general trend with Garlock is what's happening, because
20 nonmalignant claims generally reduce -- they don't --
21 typically, two -- two points. One is across the board
22 they tended to be reduced. For Garlock that's
23 particularly likely because Garlock, as you know, is a
24 company that has -- that it is difficult to maintain a
25 nonmalignant claim against them because there's the issue

Cross - Peterson

1 of how much exposure you had. So, historically,
2 plaintiffs' lawyers were not very effective in being able
3 to show that the dose response-related disease --
4 nonmalignant diseases are dose response-related.
5 Mesothelioma is not a dose response-disease like that.
6 You can get Mesothelioma with even modest and small
7 amounts of asbestos exposure.

8 So the trends for nonmalignant diseases are
9 irrelevant, basically, to trends for cancers -- for
10 Mesothelioma for that reason. They're also irrelevant
11 because it's different companies. And they're irrelevant
12 because there's a whole different set of dynamics that
13 pertain to filing nonmalignant claims as opposed to
14 cancer claims. Have they changed for nonmalignant
15 disease? Yes. Are they going to remain down there
16 forever? We don't know. They're already beginning to
17 come back for trusts. There is money in those cases. I
18 have a principle that if there's money available,
19 plaintiffs' lawyers will find it.

20 Q. So you're saying that they file against trusts but
21 they don't file against defendants in the tort system?

22 A. I have no current data about filings against
23 solvent defendants because I'm not working for any and
24 they do not report their financial statements broken down
25 by disease. I can't speak to that. But if they're

Cross - Peterson

1 increasing against trusts, in my expectation they are
2 probably going to increase against solvent defendants.
3 But I have no data one way or another. That's just --
4 that's a -- that's not even a hypothesis. That's a
5 hunch.

6 Q. But you know today that your projection of these
7 nonmalignant claims, in the Grace case and others, turned
8 out to be unreliable.

9 A. I would not make the same forecast sitting here
10 today for Grace as I made then. I will not say they're
11 unreliable because I have no data to show that. And I
12 also don't know what's going to happen in the next five
13 years. I would prefer that there wasn't a big run-up in
14 nonmalignant cases; I fear that there will be.

15 Q. But you concede that your W.R. Grace estimate had
16 a mistake of at least a billion dollars of nonmalignant
17 --

18 A. No. There's no evidence of that.

19 Q. Let me ask you about a different subject. You've
20 recognized in the past that resolution amounts in
21 bankruptcy are different from amounts outside of
22 bankruptcy; correct?

23 A. How are you using the term "resolution amount?"
24 It has some meaning to me, but I'm not sure you're using
25 it in the same way.

Cross - Peterson

1 Q. The ability to settle claims; resolve them for
2 less money.

3 A. You're saying that I have said that resolution
4 amounts in bankruptcies are different than they are in
5 tort litigation?

6 Q. Correct.

7 A. I don't think I agree with that.

8 Q. And wasn't the whole point of your March 2009
9 report in Grace that the amount that the trust would have
10 to pay claims would be substantially less than the amount
11 that Grace would have had to pay claims if it had
12 remained in the tort system?

13 A. I'm sorry. I thought you were talking at the
14 individual level. I couldn't understand your question;
15 it was ambiguous. What is your question?

16 Q. Would you agree with me that the resolution
17 amounts in bankruptcy --

18 A. Total Amounts? Total you're talking about now?

19 Q. Let's start with total amounts. They're different
20 than the amounts outside of bankruptcy.

21 A. It's hard to answer that because the outside of
22 bankruptcy is a hypothetical question. You're talking
23 about something that doesn't exist anymore. Trust is
24 what's going to be paid in the future. We can compare it
25 with what's paid in the past, but that's not concurrent

Cross - Peterson

1 data so you can't really test that. My expectation is
2 that -- my expectation is that trusts will pay fewer
3 claims than a tort defendant did historically. It will
4 pay about the same on average as was paid historically.
5 It may pay slightly more, but that's because they don't
6 pay the bottom level of claims. They've gotten rid of
7 those claims that a tort defendant's pleaded
8 historically. That's the expectations that I have.

9 Q. But just to be clear. You're talking about a
10 hypothetical. You estimated Grace's aggregate asbestos
11 liability as if it were in the tort system; correct?

12 A. That is the tort estimation --

13 Q. Right.

14 A. -- that the Court requested we provide to the
15 Court. Yes.

16 Q. And then you did an estimate of what Grace's
17 liability would be, what the Grace liability would be
18 under the trust and the TDP of the trust?

19 A. I believe I did that in Grace. Yes.

20 Q. All right. That's what I want to mention. So the
21 resolution amounts are different under --

22 A. Sitting here right now, I don't know; I don't
23 recall. I wouldn't be surprised it would be somewhat
24 different, but I haven't looked at that to compare it
25 recently.

Cross - Peterson

1 Q. Okay. We looked earlier at this report. This is
2 the one where you said the TDP were stricter because they
3 have more strict exposure requirements.

4 A. They do.

5 Q. Okay. And then you did render a report in Grace.
6 And you said that the results of your comparison, and
7 this was the comparison of your tort estimate to your
8 trust estimate, is that the TDP saves about a billion
9 dollars in liability.

10 MR. INSELBUCH: It says USG.

11 BY MR. CASSADA:

12 Q. Based on USG's historical values. It's the W.R.
13 Grace report. The TDP saves about a billion dollars in
14 liability.

15 A. So you're -- you're describing that the -- the
16 W.R. Grace report talked about USG's payments by the USG
17 trust -- projected payments by USG trust compared to what
18 they would pay if they remained -- if USG remained in
19 tort. Is that what you're saying this is?

20 Q. This is your report. You relied on information
21 from USG. What's your conclusion?

22 A. I can't answer this question. I'd have to read
23 this whole section of my W.R. Grace report to see why it
24 was even talking about USG. I don't recall.

25 Q. Okay. That's not my question though. My question

Cross - Peterson

1 is that you made a comparison, did you not, of the trust
2 liability under TDP versus Grace's liability in the tort
3 system?

4 MR. INSELBUCH: Objection. Your Honor, that's not
5 what this says.

6 MR. CASSADA: Did you do that?

7 THE COURT: Well, overruled.

8 THE WITNESS: I think I did but, you know, these
9 cases tend to run together. My recollection is I did,
10 but I'm not certain of it.

11 BY MR. CASSADA:

12 Q. And you agree that the estimation of what would
13 happen in the trust is that the less amount would be paid
14 in the aggregate.

15 A. I think it depends upon the defendant.

16 Q. That was the --

17 A. I don't know that I have a general rule on that
18 because the -- it's meant to be -- it is meant to reflect
19 the same number. Whether or not it does, I can't say.
20 And I think it varies from case to case, depending upon
21 how the TDP values are structured and what had been the
22 settlement practices of the particular debtor going
23 forward. I don't know that I have a -- could agree with
24 you as a general rule.

25 Q. Okay. But isn't it true that in W.R. Grace, and

Cross - Peterson

1 I'm referring to GST Exhibit 6572, and you've got it
2 there if you need it. You projected that the TDP in the
3 trust would save W.R. Grace about a billion dollars in
4 liability versus the tort system.

5 MR. INSELBUCH: It says W.R. Grace, Your Honor.
6 And the sentence he's pointing to says USG.

7 MR. CASSADA: I just referred him to his report
8 Mr. Inselbuch, you've got a copy there and you can read
9 it yourself.

10 THE WITNESS: But are you asking me about what I
11 said about USG, or about what I said about W.R. Grace?
12 You seem to be asking me about what I said about W.R.
13 Grace.

14 BY MR. CASSADA:

15 Q. I'm asking about W.R. Grace.

16 A. I don't know.

17 Q. It's in your report I just gave it to you.

18 A. You want me to hunt through the report?

19 Q. You made a comparison and you determined, did you
20 not --

21 A. Where would you like to direct my attention?

22 Q. Look at page 16. Why don't you start there?

23 A. It's a long page. Do you have any particular
24 place? It will take me three minutes to read this.

25 Q. Well, do you not recall that you reached -- that

Cross - Peterson

1 you were tasked with making that comparison, and you
2 reached a conclusion?

3 A. I don't recall.

4 Q. Okay. Why don't you take a moment to refresh your
5 recollection?

6 A. All right. I will spend three minutes reading
7 this.

8 THE COURT: Why don't we just admit the document
9 and you-all go on to something else? I mean, it says
10 what it says. You can base your arguments on what it
11 says.

12 BY MR. CASSADA:

13 Q. Dr. Peterson, you've not measured the aggregate
14 amount that a trust would be expected to resolve
15 Mesothelioma claims in this case, have you?

16 A. There isn't a trust yet. Well there's, I suppose,
17 by the debtors. But, you know, I've not made an
18 aggregate estimate. I have commented on it in my
19 rebuttal report. I think it would be a trust that would
20 quickly fail.

21 Q. But you've not made an estimate of what any kind
22 of trust would have to pay to resolve claims.

23 A. No.

24 Q. Okay. So if this Court is interested in what the
25 aggregate payments would be to satisfy claims in

Cross - Peterson

1 bankruptcy under a trust, your estimation report does not
2 answer that question.

3 A. It's not intended to. No, it doesn't.

4 Q. Okay.

5 A. I wasn't asked to do it by the Court.

6 Q. I want to ask you about the data that you did not
7 rely on in your report. Is it true that you did not use
8 the personal injury questionnaire information that was
9 gathered in this case?

10 THE COURT: What, for his estimation?

11 MR. CASSADA: Yes, sir, for his estimation.

12 THE WITNESS: We looked at it. We looked at data
13 from it, but it wasn't -- I didn't feel it was
14 appropriate for the basis of estimation in this case.

15 BY MR. CASSADA:

16 Q. Okay.

17 A. And it was problematic.

18 Q. Okay. So you did not use the initial personal
19 injury questionnaire, the supplemental exposure
20 questionnaire, or the supplemental settlement payments
21 questionnaire?

22 A. I wouldn't agree with your question. No.

23 Q. Well, you didn't use them in your estimation.

24 A. We did not base any of our calculations on any
25 data from those forms -- from those particular forms.

Cross - Peterson

1 And I think they're troublesome and not helpful.

2 Q. Okay. And you didn't base your estimation on any
3 data that was obtained from the DCPF trust.

4 A. Just in my testimony here. And we -- I believe we
5 used -- we may have used some of that in the rebuttal
6 report; I don't recall. I certainly testified about it.

7 Q. Did you use or consider the claims files or
8 discovery that was obtained on what's been referred to in
9 this case as the RFA list of claims?

10 A. I reviewed some of those cases. We'd already done
11 our reports.

12 Q. You had already done your report before you
13 reviewed those cases?

14 A. No. Before the -- whatever the term for those
15 things are. Before we got any information from them, we
16 prepared our reports in regard to what was pertinent to
17 it anyway when I read it.

18 Q. Did you use or consider any discovery from the 15
19 designated plaintiff's cases? You talked a little bit
20 about those yesterday.

21 A. I used it for my testimony, but I didn't use it in
22 my report.

23 Q. I take it you did not consider the ballots that
24 Garlock had collected from other bankruptcy cases.

25 A. I used it in my rebuttal report, but I didn't use

Cross - Peterson

1 it -- I think I mentioned it in my testimony. Yes.

2 Q. But you didn't use it in connection with any of
3 your estimation work.

4 A. I thought it was irrelevant and useless, so I
5 didn't use it.

6 Q. I want to turn and address some of the criticisms
7 that you've made of Dr. Bates' work in this case. First,
8 I want to talk about the testimony you gave about the
9 difficulty you had in obtaining the calculations in
10 Dr. Bates' backup material. You talked about this six-
11 week difficulty and how that you had to actually --
12 someone at your firm, I think you said Mr. Relles, had to
13 actually do a reverse engineering to actually understand
14 the report.

15 A. Yes.

16 Q. Okay. Because the calculations were supposedly
17 buried within the -- within the backup materials.

18 A. Yes.

19 Q. And you said that was -- it took six weeks to do
20 that?

21 A. I don't know if it was six weeks. It may have
22 been four. It was a long and frustrating period of time.
23 I don't recall the specific date when Dr. Relles finally
24 discovered what was going on. It took us a long time.
25 Six weeks may have been hyperbolic.

Cross - Peterson

1 Q. Let me ask you to look at an exhibit that's been
2 marked GST-7226 and ask you if you recognize this.

3 MR. INSELBUCH: Your Honor, this is an exchange of
4 correspondence between Mr. Swett and Mr. Cassada. I
5 don't see any reference to --

6 THE COURT: Ask him if he recognizes it.

7 BY MR. CASSADA:

8 Q. I'm going to ask him if he recognizes it, and I'm
9 going to ask him if the events chronicled in the
10 correspondence refresh his recollection.

11 A. I was not on these e-mail lists. I don't know
12 that I ever saw this.

13 Q. Let me see if I can refresh your recollection
14 then. I'm turning to the second page. The initial
15 e-mail came from Mr. Swett to Mr. Worf, in my firm, at
16 approximately 4:05 p.m. on Friday, March 1. And it was
17 correspondence sent on behalf of LAS, which is your
18 company; correct?

19 A. It referenced us.

20 Q. Sure. And Mr. Swett says that LAS informs me that
21 the data provided by Bates White appear to be far from
22 complete. I'm not referring to documents reviewed by
23 Bates White which you have said the debtor is in the
24 process of producing. Rather, I'm speaking of the data
25 and quantitative analyses under the 12 steps outlined in

Cross - Peterson

1 Dr. Bates' report.

2 MR. INSELBUCH: Your Honor, I object to this.

3 Tell him to look at the document and see if it refreshes
4 his recollection.

5 THE COURT: I sustain the objection.

6 BY MR. CASSADA:

7 Q. You testified that you went on through this long
8 arduous process and to had to reverse engineer. But in
9 fact, it's true that what happened is that you got
10 assistance from Bates White almost immediately after the
11 report was entered, and Bates White pointed out to
12 exactly the place within the materials that you could
13 find the calculations.

14 A. I don't know that that's the case. I don't
15 believe that's the case. I would note that Bates White's
16 estimation reporting never gives a precise amount of
17 money as to what its forecast is. It says it's less than
18 \$25 million for pending claims, and it also does the same
19 thing for future claims. When you get a huge amount of
20 data like this, one of the things you do is you search
21 for the precise amount of money over a forecast. You can
22 see where it was determined. We had to hunt through that
23 material in order to find what appeared to be the
24 references of what that number was. We found a
25 spreadsheet. And then we had to hunt through to see

Cross - Peterson

1 where in the database we could find that number appears.

2 That's the steps that we went through.

3 I agree with you that when we made requests of
4 Bates White they were cooperative. I have no complaints
5 about their being responsive when we raised requests. My
6 concern was that we were provided a report that, in my
7 view, was incomplete; a report that doesn't actually
8 state what the forecast is and doesn't tell the Court
9 what its steps were. That still was not done. I didn't
10 even see that in the direct testimony of Dr. Bates. The
11 same issues arose with regard to the rebuttal report.
12 So, we -- and we were given huge files, and we had to
13 search for it to try and find this stuff.

14 Now, I understand that that's probably an
15 appropriate thing to do in litigation, to try and sandbag
16 the other side, but I didn't appreciate it and I thought
17 it was not an appropriate thing to do. And it certainly
18 is inappropriate to write an expert report and not state
19 what your actual conclusion is and provide the specific
20 steps, and that was not in Dr. Bates' report.

21 Q. So I take it, then, you don't recall that this
22 information was requested because your office was
23 confused?

24 A. I said --

25 Q. Two weeks after the report.

Cross - Peterson

1 A. I know nothing beyond what I've said.

2 Q. And it was provided within one hour of the request
3 with a specific reference where to find the calculations
4 and the analysis.

5 A. I have no knowledge of that.

6 Q. So I take it you don't recall that.

7 THE COURT: I think that's what he just said.

8 BY MR. CASSADA:

9 Q. Okay. You agree, don't you, that the cases that
10 were actually tried against Garlock were not
11 representative of the broader population of claims
12 against Garlock?

13 A. Yes.

14 Q. Okay. And I think you've testified that you have
15 no idea how many shares would be assigned to other
16 defendants had Garlock tried all of its cases?

17 A. I don't agree with that.

18 Q. So that's the opinion that you gave yesterday?
19 That if Garlock tried all of the cases that Garlock would
20 be found liable as one of two defendants?

21 A. That's the only data.

22 Q. And 36 -- I'm sorry.

23 A. Yes. That's the only data we have. The available
24 data shows that.

25 Q. And you're saying that the data you're talking

Cross - Peterson

1 about is from the trial results of cases that you say are
2 not representative.

3 A. We're talking about -- well, those are the cases
4 they tried. Okay. You're asking me what is my
5 expectation about something that's never happened and
6 never would happen and Dr. Bates acknowledges wouldn't
7 happen. I mean, that's fantasy. This whole analysis is
8 fantasy. And I have no opinion about what might happen
9 in a virtual world that doesn't exist and can't exist.
10 It's not an appropriate basis for forecasting liability.
11 Garlock gave Dr. Bates an impossible task that is in no
12 way relevant to forecasting this debtor's responsibility
13 in reality in this case. It has nothing to do with it.
14 And I'm sorry, I'm not a science-fiction writer; I can't
15 do that.

16 Q. But in your rebuttal of Dr. Bates' work you said
17 that you would assume that Garlock would be only one of
18 two defendants that would be assigned liability because
19 of Garlock's verdict history.

20 A. All I can deal with is empirical facts. That's
21 what the empirical facts are.

22 Q. Now you believe, don't you, that all those
23 companies, those 40-plus companies for whom you estimated
24 liability and bankruptcy cases. You agree they have
25 liability for this population of claims, don't they?

Cross - Peterson

1 A. I don't agree with that.

2 Q. You don't agree that those -- you agree that those
3 companies have substantial aggregate liability for
4 Mesothelioma claims?

5 A. They do. And the trusts now have them if they've
6 gone into bankruptcy.

7 Q. So for purposes of your conclusion that Garlock,
8 if it tried cases, would be one of two -- one of only two
9 defendants, that means that the companies for which
10 trusts were created did not necessarily have liability if
11 the plaintiff in that case made a case against Garlock
12 also made a claim against the trust?

13 A. The question is, as I understand it, what would
14 have been the shares that Garlock would have been
15 relieved from because of the payments by other companies
16 in cases that it tried. As I said, I cannot speculate
17 about what that might have been if Garlock tried 25 or
18 30,000 claims. I can't speculate about it because it
19 can't happen.

20 I can look at empirical data. If Garlock were to
21 have tried in the future a reasonable number of cases, a
22 plausible number of cases, the only evidence that I have
23 is that when it sustained a verdict against it, it would
24 have ended up paying half of that verdict in part because
25 of the shares and liabilities of other liable defendants,

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1 in part because of whatever post-trial settlements there
2 may be; in part because of appeals; whatever reduced its
3 obligation. It might have been increased some by
4 post-judgment interest.

5 But the net effect, if you want to compare a
6 verdict entered against Garlock and what it paid, it paid
7 about half of the amount of money. And that includes
8 whatever credit it really got for payments by other
9 defendants in the tort litigation. That's the reality.

10 Q. You're basing that conclusion on a sample of cases
11 that you concede are not representative.

12 A. They're representative of the cases they tried.
13 They're the universe of the actual cases. For that issue
14 they are not unrepresentative. They're the precise
15 source of information. They're the best thing about.

16 Q. Okay. And making that assumption, then, you're
17 assuming that all the trusts that paid that those
18 claimants that and sued Garlock did not have liability
19 that could be assigned to them.

20 A. I'm assuming nothing. I'm looking at the data.
21 That's what actually happened. I'm not making any
22 intermediary assumptions. Whatever might be your theory
23 about it or Dr. Bates' theory about it, the reality is
24 they got credit for about half of the values of the
25 judgments entered against them.

Cross - Peterson

1 Q. You take exception to Dr. Bates' conclusion
2 regarding how defense costs are factored into
3 settlements?

4 A. I don't take exception to it. I disagree with it.

5 Q. You disagree with the idea that settlements are
6 reached as a result of a defendant's desire to avoid
7 defense costs?

8 A. I think in some cases the consideration of defense
9 costs is an element of settlement decisions. I don't
10 agree with Dr. Bates -- his conclusion about it. I think
11 his empirical data for it is totally wrong, as I
12 demonstrated yesterday.

13 Q. But you also questioned his qualitative analysis.
14 In fact, in your report, you criticized him for assuming
15 that a plaintiff's lawyer would understand that Garlock
16 had avoidable trial expenses and would use that as
17 leverage in litigation.

18 A. Would you re-read that or repeat that?

19 Q. You disputed the idea that a plaintiff's lawyer
20 negotiating a settlement for a plaintiff would understand
21 that Garlock had a desire to avoid trial costs and use
22 that as leverage in litigation.

23 A. Well both sides had trial costs and had the desire
24 not to pay it -- had an interest in not paying it. I
25 don't know that "desire" is the right word. A plaintiff

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1 would be willing to sustain his trial costs if it would
2 lead to a higher verdict in some circumstance. Garlock
3 would be willing to sustain its defense costs if there
4 was a strategic reason for doing so. It would be a
5 consideration. It's not the only consideration. It
6 doesn't drive everything. And the payments of claims
7 where there is a liability cannot reasonably be called
8 just a payment of defense costs. Where there's a
9 possibility of liability, that is also an element of it,
10 and Dr. Bates ignores that.

11 Q. But do you disagree with the idea that a
12 plaintiff's lawyer would use the defendant's desire to
13 avoid trial costs as leverage in litigation?

14 A. Well, of course, you take it into account. He
15 knows of it. I don't think it drives anything. It's
16 there. It's an element that's there. A lot of things
17 are there.

18 Q. Okay. So that's a factor that you recognize?

19 A. It can be. I wouldn't say all the time. I don't
20 think it's a -- sure. Even in a group settlement, when
21 you settle -- you set up a process for settling hundreds
22 of claims. Each side knows the other side is saving
23 litigation costs, and that's one of the reasons that each
24 side understands the other is willing to enter into this
25 deal. It's certainly not the only way, nor do I think

Cross - Peterson

1 it's the major reason.

2 Q. Dr. Peterson, do you recall that yesterday we
3 talked about this formula for determining settlements?

4 A. I recall seeing it.

5 Q. Right. And I believe you talked yesterday about
6 how you disagreed with how Dr. Bates modeled the
7 plaintiff's decision to settle. I think you said that
8 the model didn't capture "how the sausage gets made."

9 A. I think the whole model is irrelevant to most
10 resolutions of cases because they're not done on a
11 one-to-one basis.

12 Q. Do you have an alternative model?

13 A. Yes. I don't have -- I'm not -- I've not set out
14 -- I don't have the aspirations of econometricians or
15 economists. I looked at that model and I was -- in 1982
16 I published it and I wrote about it in the context of
17 individual cases. I soon learned it had little
18 pertinence to asbestos litigation. Something like this
19 may be relevant if a case is going to go to trial and
20 both parties know that and expect that or think that may
21 happen.

22 This doesn't really capture or is descriptive of
23 asbestos litigation for the majority of the claims and
24 the majority of money. I also disagree with segregating
25 out the contingency rate, because I believe that the

Cross - Peterson

1 plaintiff negotiates as an entity; that it's both the
2 lawyer and the individual claimant -- plaintiff.

3 Q. Well that's --

4 A. So I don't -- there's a number of things I
5 disagree with. I don't think this is a useful or
6 descriptive model.

7 Q. So you believe, and I think you said this on page
8 44 of your rebuttal report, that the plaintiff's
9 attorney's costs should be factored in as an avoidable
10 cost.

11 A. Well, I don't think it should be. I think it is
12 factored in; that's the reality. I think that's the
13 model that doesn't say that is a distorted model.

14 Q. You think that in settling claims the plaintiff's
15 lawyer considers its own interest in avoiding trial
16 costs. The plaintiff's lawyer.

17 A. I know some of these plaintiffs' lawyers. I think
18 that if they were deciding whether or not to settle a
19 case and they had faced a half a million dollars in trial
20 costs, they'd take it into account. And the defense
21 lawyer knows they'd take it into account.

22 Q. Now, what basis do you have for believing that?

23 A. I have the utmost confidence in the overwhelming
24 greed of plaintiffs' lawyers.

25 Q. I'm sorry?

Cross - Peterson

1 A. I'm being flip. I'm sorry. Sorry, Your Honor.

2 Plaintiffs' lawyers represent lots of claimants.

3 They have to consider and husband of their time.

4 Everyone knows that. A particular plaintiff knows it and

5 he's told that, and that's one of the values they

6 appreciate, because they're representing not only them

7 but because they're representing their brothers and

8 sisters they worked with. So they're all aware of that.

9 The time spent on this case can't be spent on another

10 case.

11 And so -- but in any event, I don't think any of

12 that's a very important matter to a 73 year-old dying

13 Mesothelioma victim who faces a horrible rest of his life

14 and who's worried that his wife would have money. The

15 issue for him -- the only issue for him is, how much

16 money can I get? How quickly can we get it? That is the

17 issue. Now the plaintiff's lawyer will tell them -- I

18 went through this ritual yesterday. The plaintiff's

19 lawyer will tell him that he can get him a certain amount

20 of money today. He can try this case against this

21 defendant.

22 THE COURT: Don't do it again.

23 THE WITNESS: All right, Your Honor. But at some

24 point -- and that process probably differs over time once

25 you've collected it and you're the remaining defendant.

Cross - Peterson

1 If he's already got money, he's less concerned about it.
2 So the dynamics are that. They're just -- and they
3 differ over time. But it's not this abstract, bloodless
4 economic model.

5 BY MR. CASSADA:

6 Q. Dr. Peterson, let me ask if you can identify for
7 us certain documents. First, Dr. Peterson, let me ask
8 you to look at a document that's been marked as GST-7229
9 and ask you if you can identify this document.

10 A. The trouble with e-mail is you have to start at
11 the earliest time to understand them. I've reviewed
12 this.

13 Q. What is it?

14 A. It's a series of emails in which I didn't
15 participate but was in the end cc'd having to do with a
16 request for a table that we had never done in the Garlock
17 -- in the Grace case, I believe by the Libby lawyers,
18 although I'm not sure. I don't really recognize that
19 name. And a table that Mr. Finch notes that we didn't
20 rely upon, didn't have, and had to create for this other
21 case. That's what that correspondence pertains to.

22 Q. The other case is the W.R. Grace case?

23 A. It does.

24 Q. And what you did is you did calculations from your
25 report of the projected number of future claims into the

Cross - Peterson

1 net present values?

2 A. I have no recollection of this.

3 Q. I'm sorry?

4 A. I have no recollection of this.

5 Q. But this is what you did and these are your
6 calculations?

7 A. I see it. I just don't remember it. I don't
8 doubt that it's accurate.

9 Q. Okay. You were copied on it?

10 A. It's a 2009 document in a different case on an
11 obscure matter. I don't remember this.

12 Q. Okay. It's your lawyer or the Committee's lawyer
13 talking about what you did; correct?

14 A. I understand that. I recognize Mr. Finch's name.

15 Q. Let me ask you if you can identify --

16 THE COURT: Seems like we're getting down to
17 scraping the bottom of the barrel. Let's try to wind
18 this up.

19 MR. CASSADA: I'm just doing some housekeeping,
20 Your Honor.

21 BY MR. CASSADA:

22 Q. Let me ask you, Dr. Peterson, to look at a
23 document that's been marked GST-13. Do you recognize
24 that?

25 A. Again, this is a document that -- a file -- it is

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1 a memorandum of a file and I'm not cc'd on it. I don't
2 know whether or not I've ever seen this document before.
3 I doubt that I've seen the document before. It describes
4 work that we did, apparently, LAS. It describes our
5 forecast. I don't know whether or not I've seen this
6 before. I tend to doubt it.

7 Q. Your Honor, to save time, we'll move the admission
8 of the exhibits that Dr. Peterson has been able to
9 identify and we'll seek agreement with the Committee to
10 gain the admission of other documents they produced to
11 us.

12 THE COURT: We'll admit the ones he has
13 identified. Yes.

14 MR. INSELBUCH: Your Honor, with respect to one
15 document, GST-6577, which is a report from GAF, they
16 submitted only an excerpt. We object to that. If they
17 submit the whole document, we have no objection to it.

18 THE COURT: We'll admit that. And if you want to
19 throw in the rest, you can.

20 MR. INSELBUCH: Okay.

21 THE COURT: Okay. Any redirect?

22 MR. CASSADA: That's all I have, Your Honor.

23 MR. INSELBUCH: There's no redirect, Your Honor.

24 THE COURT: Okay. Then you can step down. Thank
25 you, Dr. Peterson.

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1 THE WITNESS: Thank you again.

2 (Witness excused at 12:20 p.m.)

3 MR. INSELBUCH: Would this be the time to move the
4 exhibits we did with him?

5 THE COURT: Yeah. We'll admit all the exhibits
6 you went through with him.

7 MR. INSELBUCH: And I just say mea culpa. We
8 found in his slideshow that we have three pages with
9 typos. Two of the typos we, unfortunately, referred to
10 "Goodyear" when it should have been "Goodrich."

11 THE COURT: I understand.

12 MR. INSELBUCH: We'll hand those up. And the one
13 page that we did talk about where the lines were
14 switched, we would offer you the correct statement and
15 page. I'll show them to you.

16 MR. CASSADA: I'll look at them with
17 Mr. Inselbuch.

18 THE COURT: All right. Why don't we take a break
19 and come back at 1:15?

20 MR. GUY: Your Honor, I'm assuming we will proceed
21 with Dr. Heckman?

22 THE COURT: Pardon?

23 MR. GUY: I'm presuming at this point we will
24 proceed with Dr. Heckman so we can get him on and off on
25 Friday?

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1 THE COURT: However you all want to do it.

2 MR. CLODFELTER: Your Honor, Dr. Heckman is a
3 rebuttal witness to Drs. Peterson and Rabinovitz, who
4 has not yet testified.

5 THE COURT: Let's try to do Dr. Rabinovitz first.

6 MR. GUY: Your Honor, the problem with that is,
7 we're not going to get her on and off in time to get
8 Dr. Heckman on. Dr. Heckman is responding to the
9 methodology that was used by Dr. Rabinovitz and
10 Dr. Peterson.

11 THE COURT: Let's see how much we can get done.
12 We'll come back at 1:15.

13 MR. CLODFELTER: Your Honor, if I may. Mr. Guy
14 and I, and I appreciate him, have tried to work on this
15 issue very cooperatively. And if I may make a
16 suggestion. Your Honor had said we originally were going
17 to adjourn at 4:30. If we do not now have to vacate the
18 courtroom and the Court were willing to proceed to 5:30,
19 perhaps Mr. Guy could take Dr. Rabinovitz on direct. And
20 that, at least, would then allow us to put up Dr. Heckman
21 and have him off at the end of the day.

22 THE COURT: All right. We'll go with
23 Dr. Rabinovitz until 3:30 and then we'll do Dr. Heckman.
24 See you at 1:15.

25 (Off the record at 12:23 p.m.)

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1 (On the record at 1:16 p.m.)

2 THE COURT: Have a seat. All right.

3 MR. CASSADA: Your Honor, I wanted to make a brief
4 statement about a proposal for how to proceed with our
5 witnesses and time.

6 THE COURT: Okay.

7 MR. CASSADA: We're prepared to offer our rebuttal
8 witnesses and projected time necessary to complete their
9 direct. I first wanted to state for the record the
10 amount of time used by the parties thus far. Through
11 yesterday, the Committee and FCR used about 50 hours of
12 their exam, direct and cross-examination of the debtor's
13 witnesses. The debtors have used about 38 hours for
14 their direct and cross-examination. It's about 12 hours
15 difference. If not for that, we think that we would have
16 been able to complete our case in the time allotted.

17 So at this point, we respectfully request -- and
18 out of respect for the Court's time, we've streamlined
19 our rebuttal case as best we can. We've eliminated
20 several witnesses, reducing the time, and we've reduced
21 the time allocated to each of the remaining witnesses.
22 We believe it would be advisable for us to present seven
23 witnesses to complete the record. And I'm going to go
24 over the witnesses and the amount of time that we think
25 they'll take. As I say, we've reduced the time needed to

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1 elicit the necessary direct testimony for those
2 witnesses.

3 On the context of the time left. If the Court
4 would begin the two remaining days at 9 o'clock and go
5 through 5:30 -- I'm, of course, not trying to tell the
6 Court how to conduct its court time but just suggesting
7 that if that is the -- those are the time parameters, we
8 think that would leave us 14 hours of actual court time.
9 We believe it would take about two hours to complete the
10 cross-examination and redirect of Dr. Rabinovitz, and
11 that would leave 12 hours.

12 And we respectfully request that the debtors be
13 allocated seven of those 12 hours, given the disparity in
14 time to date for the direct rebuttal testimony of our
15 witnesses as follows. We would propose to call Mark
16 Behrens, he's a legal trends witness, for a direct time
17 of one hour; Dr. Elizabeth Anderson for one hour;
18 Dr. Burt Hesselink for 20 minutes; and Dr. John Henshaw
19 or Fred Boelter, depending on availability, for a
20 20-minute rebuttal. And for the second date we would
21 intend on offering David Glaspy for 50 minutes;
22 Dr. Gallardo-Garcia in rebuttal for one hour; and Dr.
23 Bates for two hours and 30 minutes.

24 We've been at this for more than three years, and
25 we respectfully request that the debtors be allowed seven

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1 hours of court time to complete our case. If, because of
2 the Court's desire to split that time evenly,
3 notwithstanding the uneven use of time to date, we can't
4 accomplish that in the two remaining days, we would
5 respectfully request the Court consider adding one final
6 morning to the trial schedule to enable the debtors to
7 have a final seven hours to complete its streamlined
8 rebuttal case. Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. GUY: Your Honor, where does Dr. Rabinovitz
11 fit in that schedule?

12 THE COURT: Pardon?

13 MR. GUY: Where does Mr. Cassada envision
14 Dr. Rabinovitz fitting in that schedule?

15 MR. CASSADA: I was envisioning Monday morning.

16 THE COURT: Yeah.

17 THE COURT: I think we ought to finish that up as
18 quick as we can.

19 MR. FINCH: Your Honor, it was my idea at the
20 outset that we use a chess clock and the debtors rejected
21 that. They are proposing to put on seven witnesses in
22 two days. I think that's somewhat fanciful, given that
23 Dr. Rabinovitz's cross is probably going to take most of
24 the morning. As to Ms. Anderson, they said an hour
25 direct. I would anticipate an hour cross. As to

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1 Mr. Hesselinnk, they said a 20 minute direct. God bless
2 them if they can get it done in 20 minutes. I assume our
3 cross will be not much longer than that.

4 As to Mr. Henshaw and Mr. Boelter, I can't
5 imagine that there is anything that either of those
6 gentlemen could testify to that is rebuttal. Rebuttal is
7 supposed to be a response to something that was
8 unanticipated in your case in chief. You heard
9 Mr. Boelter testify for more than four hours on direct
10 and cross and Mr. Henshaw for about two and a half or
11 three.

12 I think it's, you know, in terms of the Court's
13 suggestion that people be surgical, this is, A)
14 cumulative and B) a waste of time. If they want to do
15 it, we'll cross them. But I think the odds of getting
16 all that done on Monday are slim and none.

17 And then as to the rest of the witnesses, I'll let
18 Mr. Swett respond. But the idea that they can call a
19 defense lawyer and Dr. Bates and Dr. Garcia and get it
20 all done on one additional date strikes me as highly
21 unrealistic.

22 MR. SWETT: Your Honor, optimally we would finish
23 this case on Monday. Recognizing that it was the
24 debtor's insistence on spending a great deal of the front
25 end of the allocated time on science issues, while on

Cross - Peterson

1 notice that you weren't going to decide those issues on
2 the merits. That was overkill. When you issued your
3 first Case Management Order, you said there would be a
4 fixed amount of time and we would flow over only if you
5 were persuaded that the time had been used efficiently.
6 It's certainly within your discretion if you think you've
7 heard enough for the purposes of estimation about the
8 science to cut them back. Whether or not you choose to
9 do that, it seems to me that you would be well advised to
10 hold the trial to one more day and allow the parties to
11 fit in what they think is most important in that period
12 of time.

13 Certainly, we shouldn't go beyond Tuesday and
14 there ought to be a firm stop on that. And as far as the
15 cross time for the non-science witnesses that they've
16 listed to you just now, I don't see a problem with the
17 possible exception of Dr. Bates whose direct they've
18 sketched out at two and a half hours for rebuttal. Apart
19 from that, I think we can certainly deal with their
20 witnesses on a commiserate basis. I don't think it would
21 be appropriate to allow a lengthy rebuttal without cross.
22 That would be a prescription for distorting the record.

23 THE COURT: All right. Well, I have been trying
24 not to try either one of your-all's cases for you,
25 sometimes succeeding and sometimes not. But I don't

Cross - Peterson

1 think I ought to dictate to either side who they can
2 call. I will say I don't think we need to accumulate
3 anymore science evidence. I'll let the debtor decide
4 what they want to do about that, but -- and we'll try to
5 get what evidence -- hear all the evidence that we can.
6 Right now we've got today and Monday. So I'd say let's
7 do Dr. Rabinovitz's direct then Dr. Heckman. Then Monday
8 morning, Dr. Rabinovitz's cross. And then you can do
9 whatever else you want to do that day, and we'll do
10 Glaspy, Gallardo-Garcia and Bates the next day, whenever
11 that is.

12 MR. GUY: Yeah, whenever that is.

13 THE COURT: Not Tuesday.

14 MR. SWETT: Your Honor, that's a big problem. I
15 understand that Mr. Guy has a conflict with Tuesday, but
16 the alternative of coming back in several weeks is
17 completely unpalatable. We need to close the record and
18 get on with it.

19 THE COURT: I agree.

20 MR. SWETT: And other people have other
21 commitments later in the month.

22 THE COURT: What about the week after next?
23 Thursday and Friday of that week -- Thursday of that
24 week?

25 MR. GUY: Yes, Your Honor.

Cross - Peterson

1 MR. SWETT: What time are we talking about?

2 THE COURT: I don't know the day. What is it,
3 about the 21st or something like that?

4 MR. MILLER: Your Honor, I believe you were
5 scheduled to be in Asheville to hear one of my cases on
6 the 22nd. I apologize for that being the first thing
7 I've said at this whole trial. Skunk at the picnic as
8 Mr. Swett likes to say.

9 THE COURT: We may just move that again.

10 MR. MILLER: That would be fine with me.

11 MR. SWETT: Your Honor, the truth of the matter is
12 the parties will use the time you allow. You've allowed
13 plenty of time. If you draw the line in the sand on one
14 more day, noone has a just complaint.

15 THE COURT: How about the 22nd?

16 MR. GUY: That works fine, Your Honor.

17 MR. CASSADA: We're flexible, Your Honor.

18 MR. FINCH: That works for us. But my
19 understanding is the 22nd wouldn't be any science
20 witnesses. It would just be --

21 THE COURT: No. No.

22 MR. FINCH: Is that correct?

23 MR. WOLF: That's correct.

24 MR. FINCH: Okay. So Mr. Frost and I will be
25 here Monday, but then we can disappear into the sunset.

Cross - Peterson

1 THE COURT: We'll do whatever we can on Monday,
2 and then we'll do Glaspy, Gallardo-Garcia and Bates on
3 the 22nd.

4 Mr. Miller, if you can contact Mr. Pinkston.

5 MR. MILLER: I can do that right now.

6 MR. FINCH: Your Honor, may Mr. Frost and I be
7 excused from the courtroom?

8 THE COURT: You're just trying to get out of here
9 before we sing *Happy Birthday*.

10 MR. FINCH: I would appreciate Your Honor's
11 sentiments.

12 THE COURT: You-all can leave.

13 MR. FINCH: Thank you.

14 MR. GUY: Your Honor, if everyone's ready?

15 THE COURT: Yes, sir.

16 MR. GUY: I call Dr. Rabinovitz to the stand.

17 (Witness duly sworn at 1:28 p.m.)

18 MR. GUY: Your Honor, may I have permission to do
19 the direct examination from right here?

20 THE COURT: Yes, sir.

21 MR. GUY: Thank you. Your Honor, we're going to
22 hope that we can bring the Court back to Kansas from Oz.
23 We would encourage the Court to ask any questions of
24 Dr. Rabinovitz. And to the extent we touch on issues
25 that

Direct - Rabinovitz

1 the Court has questions for her, feel free to interrupt
2 me so we can assist the Court as best as we can at
3 understanding these issues.

4 **DIRECT EXAMINATION**

5 BY MR. GUY:

6 Q. Dr. Rabinovitz, could you state your full name for
7 the record please?

8 A. Francine F. Rabinovitz.

9 Q. And where do you work?

10 A. I'm the President of Hamilton, Rabinovitz and
11 Associates.

12 Q. Could you tell the Court what you do for a living?

13 A. We primarily do -- we only do policy analysis,
14 among which a prominent component is mass tort estimation
15 and related issues.

16 Q. And are you acting as the asbestos-related bodily
17 injury claims estimation expert to Mr. Grier in this
18 case?

19 A. I am.

20 Q. When were you retained?

21 A. In 2010.

22 Q. At the end of 2010?

23 A. Yes.

24 Q. You were asked by the FCR to testify as an expert

25 --

Direct - Rabinovitz

1 A. Mr. Guy, I left my glasses down there. Oh, this
2 is big enough. Okay.

3 Q. No, no. We'll get them for you.

4 May I approach, Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: Thank you.

7 BY MR. GUY:

8 Q. Dr. Rabinovitz, you were asked by the FCR to
9 testify as an expert at this trial?

10 A. Yes, sir.

11 Q. What, specifically, were you asked to do?

12 A. I was asked to estimate the number and value of
13 pending and future Mesothelioma claims arising from
14 alleged exposure to asbestos-containing products
15 manufactured by Garlock, and then provide the results of
16 that estimation to arrive at a reliable and reasonable
17 estimate of the aggregate amount of money that Garlock
18 will require to satisfy present and future Mesothelioma
19 claims, following the judge's order.

20 Q. And that's the language from the judge's order;
21 correct?

22 A. Yes.

23 Q. Which you have read; correct?

24 A. Yes.

25 Q. Before we get into the substance of your

Direct - Rabinovitz

1 testimony, I want to go through your education,
2 background and experience. And Your Honor, I intend to
3 move through this as quickly as we can --

4 THE COURT: Okay.

5 MR. GUY: -- But the debtors have asked that
6 Dr. Rabinovitz be Dauberted out, so we need to lay the
7 record.

8 BY MR. GUY:

9 Q. This slide shows your education; correct?

10 A. Yes.

11 Q. Cornell and MIT?

12 A. Yes.

13 Q. You have a doctorate from MIT?

14 A. I do.

15 Q. And do you have teaching experience?

16 A. Yes. As you can see here, I have sort of a two
17 track career. One is teaching from right when I got my
18 degree to the year 2000 when I became Professor Emeritus,
19 that is retired, at the University of Southern California
20 but I had already been at MIT, tenured at UCLA, at the
21 University of Florida. Douglass was then called the
22 Women's College of Rutgers University and so on.

23 And simultaneously, I have always done public
24 policy consulting starting in 1976 under the auspices of
25 my own firm that continues until this day.

Direct - Rabinovitz

1 Q. And Your Honor, all this information is on
2 Dr. Rabinovitz's CV --

3 THE COURT: All right.

4 MR. GUY: -- which I would ask to be admitted.

5 BY MR. GUY:

6 Q. Going to the next slide. Have you received any
7 court appointments in connection with your work in policy
8 analysis?

9 A. Yes. Among the assignments I have done, I
10 assisted as an expert for two judges, actually, in the
11 desegregation of the Los Angeles Unified School District
12 from 1978, actually, to 1984. And in addition, I was
13 assigned working under six judges in series to a case
14 which involved the rezoning of the entire city of Los
15 Angeles.

16 Q. Now have you worked on non-asbestos-related work
17 in the mass tort area?

18 A. I have. Two examples are In Re: A.H. Robins,
19 which is the Dalkon Shield case in which my estimation
20 work was done for the insurer, Aetna Life and Casualty;
21 and In Re: Silicone Gel Breast Implants, which was the
22 Dow Corning breast implant case where the work was as
23 sort of a shadow expert for the Dow Chemical Company
24 shadowing the work that was being done for the company
25 which actually produced the product, which was Dow

Direct - Rabinovitz

1 Corning.

2 Q. Where were you recognized as an expert on mass
3 tort estimation of claims?

4 A. Yes. In the A.H. Robins case I was a court-
5 appointed -- well I was recognized as an expert.

6 Q. In addition to your experience outside of
7 asbestos, do you have experience estimating claims in the
8 asbestos arena?

9 A. I do.

10 Q. And could you just briefly describe for the Court
11 the four areas -- five areas?

12 A. Well I have done asbestos-related work outside
13 bankruptcy, inside bankruptcy. I have done asbestos-
14 related work for a series, and continue to do today, of
15 companies who are required, as you've heard under FAS-V,
16 to estimate in their report their asbestos liability. I
17 have actually operated claim facilities and trusts. And
18 with respect to the congressional testimony, I was the
19 estimator for a group of very large companies called the
20 Asbestos Study Group whose activities led to what has
21 been referred here in court -- to in court as the FAIR
22 Act; and also had the responsibility for being the
23 interface on methodological and analytic matters with
24 CBO, the Congressional Budget Office which, when there
25 are bills coming forward, scores all those bills.

Direct - Rabinovitz

1 Q. And did you testify in favor of the FAIR Act?

2 A. Yes. I testified before the Senator Specter's, at
3 that time, Judiciary Committee on behalf of the Asbestos
4 Study Group in support of the FAIR Act.

5 Q. Is it fair to say that you have experience from
6 the full gamut of asbestos for companies that are outside
7 of bankruptcy, companies that are in bankruptcy, and
8 trusts that are created after bankruptcy?

9 A. Yes.

10 Q. Do you mostly represent any particular entity,
11 such as an FCR?

12 A. Well, in the -- in the -- outside bankruptcy
13 leading up to bankruptcy there are more FCRs, but there
14 are also companies and parents, and they've not been
15 mentioned here. I think of this as an industry. And
16 part of the industry are the parents of the companies
17 that you see in the bankruptcy court. An example might
18 be Halliburton for Dresser Industries. But in
19 bankruptcy, many of them are FCRs, not all.

20 Q. And you have experience representing debtors;
21 correct?

22 A. Yes.

23 Q. Solvent companies? Solvent companies? Do you
24 represent solvent companies?

25 A. Oh, yes. Our SEC reporting is all for solvent

Direct - Rabinovitz

1 companies. What stopped me is they're not debtors. They
2 are simply functioning the way they are. But an example
3 might being Halliburton again for Dresser Industries or
4 PPG, Pittsburgh Plate and Glass, and the Pittsburgh
5 Corning litigation, and so on.

6 Q. Dr. Rabinovitz, let's turn quickly to your
7 asbestos-related work outside of bankruptcy. Can you
8 give the Court a very quick summary, a very quick
9 summary, of the work you did there?

10 A. The earliest work I did was for Judges Lambros and
11 McGonegal in the federal and state courts in Ohio. This
12 was very early. They had a very large number of cases
13 and couldn't really -- they had over a thousand cases
14 between the two of them and it looked like there was
15 going to be no way to bring them to trial. They set up a
16 system, with two Special Masters supervising, in which
17 they wanted to know what similar cases had been resolved
18 for and use that material to inform the settlement
19 conferences that they did either in the federal court or
20 in the state court. And I served until those thousand
21 cases had been resolved by providing analytic work to
22 guide the settlement discussions to the judges.

23 Q. And the Court relied on your findings there?

24 A. It did.

25 Q. So you were an independent expert to the Court?

Direct - Rabinovitz

1 A. Yes.

2 Q. And you worked on these other cases outside of
3 bankruptcy.

4 We'll move on. Next slide. You've also done a
5 significant amount of work for Future Claimants'
6 Representatives like Mr. Grier; correct?

7 A. Correct.

8 Q. And you were appointed by the courts in each of
9 these cases?

10 A. Yes.

11 Q. And did you do the similar sort of work in those
12 cases that you've been asked to do here?

13 A. Yes.

14 Q. Did you use the same fundamental methodology in
15 those cases that you've used in this case?

16 A. I did.

17 Q. And did you testify in any of those cases?

18 A. The cases that are followed by an asterisk here --
19 Celotex, Owens Corning, Quigley, Thorpe, Western Asbestos
20 -- are cases in which, in addition to providing authority
21 reports and being deposed, I provided testimony to the
22 Court.

23 Q. The methodology you used here is the same
24 methodology you used outside of the bankruptcy courts;
25 correct?

Direct - Rabinovitz

1 A. It is.

2 Q. Were you recognized by the court in those cases as
3 an expert on the estimation of pending and future claims?
4 By "those cases," I mean the FCR cases.

5 A. Yes.

6 Q. Next slide please. In addition, you've done
7 court-appointed work for debtors; correct?

8 A. I have.

9 Q. And also property damage committees?

10 A. Yes.

11 Q. Can you briefly explain to the Court how that is
12 different from the work you do for personal injury
13 claims?

14 A. The task is the same. But in the cases in the
15 first set of blocks, the clients were a variety of
16 companies: ASARCO, Fuller -- in the Fuller-Austin case
17 my customer was the parent in Mid-Valley, which is
18 Dresser. The client was, in fact, Halliburton in Motors
19 litigation -- Liquidation, rather. And in Mid-Valley, in
20 fact, I had been doing the SEC work in Motors for General
21 Motors before it became Motors Liquidation. And it's
22 asbestos responsibilities were part of that liquidation.
23 And In Re: NARCO, my client was Honeywell, again, the
24 parent.

25 Q. And again, you used the same methodology; correct?

Direct - Rabinovitz

1 A. I did.

2 Q. Now you worked for the PD Committee in Grace.

3 Let's talk about that one quickly. In earlier testimony
4 there was discussion about the ruling that Judge
5 Fitzgerald made concerning Zonolite attic insulation.

6 A. Yes.

7 Q. Do you remember that?

8 A. Yes.

9 Q. Are you aware of the Court's ruling?

10 A. The court found that Zonolite did not cause the
11 kinds of asbestos-related diseases that we are talking
12 about here, unless it was disturbed.

13 Q. So the key issue was whether it was disturbed or
14 not?

15 A. Yes.

16 Q. Do you know the amount that Grace settled for in
17 its case?

18 A. It's approximately \$3 billion.

19 Q. And do you know what the FCR's estimate in that
20 case was, approximately?

21 A. Something like 3.5 or -- it was under four but
22 above three.

23 Q. Do you know who the FCR's estimation expert was in
24 that case?

25 A. Yes.

Direct - Rabinovitz

1 Q. Who was that?

2 A. Jennifer Biggs of Towers Watson, who works also as
3 an outside evaluator in the Manville trust for -- where I
4 am. Also, on the prior slide it shows an expert for the
5 futures.

6 Q. Is Towers Watson the same as Tillinghast?

7 A. Yes. It was once Tillinghast.

8 Q. Do you know if Tillinghast ever prepared
9 estimation -- estimates for the debtors?

10 A. Well, I have one SEC client for whom I know they
11 have prepared insurance estimates.

12 Q. I mean this particular debtor, Garlock.

13 A. Oh, I do not. Oh. Yes, I'm sorry. I recall
14 reading that they did, at one time, provide estimates for
15 Garlock.

16 Q. And do you recall the amount of that estimate?

17 A. No.

18 Q. And the timeframe?

19 A. No, I do not.

20 Q. Your Honor that is ACC-173. We will submit it to
21 the Court at a later date so the Court has it. We won't
22 spend time on it here.

23 MR. CASSADA: I'm sorry. What did you just --

24 MR. GUY: The Tillinghast estimation.

25 BY MR. GUY:

Direct - Rabinovitz

1 Q. Next slide, please. Now this is your asbestos-
2 related SEC work; correct?

3 A. Yes.

4 Q. What do the asterisks represent?

5 A. They represent that the work continues. That is,
6 a lot of these clients are clients we have been doing
7 estimation for for many, many years, and it continues up
8 until today. Some of these companies where we have not
9 continued have been reorganized. American Standard at
10 the top of the list no longer exists as a unified
11 company. But Ampco, Ashland, Cabot, Covidien, Crane,
12 Honeywell are all companies for whom we continue to
13 provide asbestos-related estimation.

14 Q. At the risk of repetition, you use the same
15 methodology; right?

16 A. Yes.

17 Q. Do these companies rely on you to prepare reliable
18 and reasonable estimates with the amount they need to pay
19 asbestos claims in the present and future?

20 A. They do. And they report them in their SEC
21 filings, and there is a footnote which requires us to
22 sign their filings attesting to the accuracy of the their
23 representation of our work.

24 Q. And in preparing those estimates, do you rely on
25 historical data?

Direct - Rabinovitz

1 A. We do.

2 Q. Do you agree the SEC thinks it's appropriate to
3 use the lowest point of range of possible estimates?

4 A. Yes.

5 Q. Are for your work in these companies, your ongoing
6 work in these companies, are you aware of trial verdicts;
7 correct? You are aware of trial verdicts for these
8 companies?

9 A. Oh, yes.

10 Q. You're also aware of their defense costs; correct?

11 A. Yes.

12 Q. And the number of claims against them?

13 A. Yes.

14 Q. The impact of trust claims?

15 A. To the extent that trust claims are reflected in
16 the payments they are making to resolve or when they try
17 cases to try cases, but not in any other way.

18 Q. And you're aware of trends in asbestos litigation;
19 correct?

20 A. Yes. And indeed, that is one of the required
21 areas. There are guidelines for conformity to the
22 Sarbanes-Oxley legislation. And each of these companies
23 is actually required by those guidelines by their
24 accountants to do a periodic review at least once a year
25 of the state of the asbestos litigation.

Direct - Rabinovitz

1 Q. And do your estimates for these companies for SEC
2 purposes include defense costs?

3 A. They do.

4 Q. Is that consistent with FSB-V?

5 A. Yes.

6 Q. Now do the estimates you prepare for SEC purposes,
7 do they go out at a particular period?

8 A. They vary from companies, Ashland being an
9 example, which goes out the full period that is being
10 considered here to other companies where the companies
11 themselves believe that they can't predict out for that
12 full period, and so the estimates may go out for ten
13 years or for five years. But there are a range, and they
14 are the ones who make that decision.

15 Q. Are any of these companies comparable to Garlock
16 in terms of the products they make or made?

17 A. Well, Crane -- not at the detail level, but Crane,
18 I guess, would be the closest because it is in the valve
19 and pump business.

20 Q. Now, you --

21 A. And Tyco International did at one time make
22 valves. Tyco has also broken apart into three separate
23 pieces, and the different pieces got different pieces of
24 their prior asbestos liability.

25 Q. And quickly, this is the odd trusts and claims

Direct - Rabinovitz

1 facilities work; correct?

2 A. Yes.

3 Q. And, again, you use the same methodology; right?

4 A. We do.

5 Q. And you are familiar with trust distribution
6 procedures in connection with this work?

7 A. Yes.

8 Q. And you are familiar with the trust's operations?

9 A. Yes.

10 Q. And you are familiar with how claims are
11 processed?

12 A. Yes.

13 Q. You talked earlier about your congressional
14 testimony. Let's go back a little bit. Do you know if
15 Dr. Bates testified in connection with the FAIR Act?

16 A. Yes. Dr. Peterson and I testified, and Dr. Bates
17 testified later.

18 Q. And he testified against you; correct?

19 A. He did.

20 Q. And during that timeframe he was working for
21 Garlock; right? In 2005.

22 A. I believe so.

23 Q. Have your opinions been relied upon or adopted by
24 the courts where you work?

25 A. Yes, they have.

Direct - Rabinovitz

1 Q. I just wanted to show two examples. Your Honor,
2 the first one is Owens Corning. That was an insulator
3 case; correct?

4 A. This is Owens Corning. Owens Corning has been
5 discussed here; the maker of Kaylo insulation. Very
6 familiar: Pink Panther.

7 Q. And who was the judge in Owens Corning?

8 A. This is an opinion from Judge Fullum.

9 Q. And in this case you were representing the FCR;
10 correct?

11 A. Yes.

12 Q. And you used the data to prepare a claims
13 estimate; correct?

14 A. Yes.

15 Q. And the Court recognized you as not being affected
16 by any pro-plaintiff bias; correct?

17 A. Right. They said in the -- Judge Fullum said in
18 his final opinion, as indicated here, that both
19 Dr. Vasquez, who was working with the company, and I were
20 about equally persuasive. We attempted and largely
21 succeeded in adjusting historical figures to reflect
22 changed circumstances.

23 "Dr. Rabinovitz has had extensive experience
24 estimating liability claims on behalf of insurance
25 companies. I am satisfied her testimony is not

Direct - Rabinovitz

1 affected by pro-plaintiff's bias."

2 And he concluded the appropriate figure was
3 between Dr. Vasquez's high estimate and my low estimate.

4 Q. Moving on to the next slide, somewhere where we
5 hope this case won't go, the Fourth Circuit. What do the
6 judges in the Fourth Circuit say about your work?

7 A. This was the Dalkon Shield case which we
8 mentioned. On appeal, the Circuit said, "A detailed
9 analysis of all of the responses was then
10 performed by the expert witnesses who testified in
11 the case. A good example of competent testimony
12 was that of Dr. Francine F. Rabinovitz, who
13 testified on behalf of Aetna. We illustrated her
14 testimony because her conclusions more nearly
15 match the conclusions of the district court than
16 any other single witness offered. From our brief
17 recital of a small part of the evidence before the
18 district court we see that its finding of \$2.475
19 billion as the estimate to include all Dalkon
20 Shield claims is not clearly erroneous under
21 Rule 8013. Indeed, we think the district court
22 would have been quite justified in accepting
23 Dr. Rabinovitz's testimony so appellants may not
24 complain about the district court's arrival at a
25 somewhat higher figure."

Direct - Rabinovitz

1 Q. You're not trying to build a practice so that
2 you're seen as the go-to expert for debtors, are you?

3 A. No.

4 Q. You're not trying to build a practice so you're
5 seen as the go-to expert for creditors either, are you?

6 A. No.

7 Q. Do you consider yourself to be an independent
8 expert?

9 A. I do.

10 Q. Have your opinions ever been rejected by any
11 court?

12 A. No.

13 Q. Have you ever been proffered as an expert but not
14 qualified by a court?

15 A. No.

16 Q. Your Honor, I move to qualify Dr. Rabinovitz as an
17 expert in the estimation of asbestos claims and
18 liabilities. And I understand, Your Honor, the debtors
19 have an issue with her opinion in this case, but I don't
20 think there should be any issue that Dr. Rabinovitz is an
21 expert in this area.

22 THE COURT: We will admit her as such.

23 MR. CASSADA: Your Honor, just subject to our
24 objection?

25 THE COURT: Right.

Direct - Rabinovitz

1 BY MR. GUY:

2 Q. Dr. Rabinovitz, did you prepare an expert report
3 in this case?

4 A. Yes.

5 Q. And you also did a rebuttal report; correct?

6 A. Yes.

7 Q. Do you have copies available to you?

8 A. Yes. They're up here.

9 Q. The initial expert report is the one that contains
10 your opinions that we're going to talk about today;
11 correct?

12 A. Yes.

13 Q. Are you prepared to discuss them today?

14 A. I am.

15 Q. Are you prepared to assist the Court in
16 determining a reliable and reasonable estimate of the
17 aggregate amount of money that Garlock will require to
18 satisfy present and future Mesothelioma claims?

19 A. Yes.

20 Q. Are your opinions to your knowledge, to the best
21 of your knowledge, based on sufficient facts and data?

22 A. Yes.

23 Q. Are your opinions the product of reliable
24 scientific principles and methods?

25 A. I believe so.

Direct - Rabinovitz

1 Q. And have you reliably applied those principles and
2 methods to the facts and data in this case?

3 A. I believe I have.

4 Q. Now, quickly, let's look at the reliance
5 materials. Now you've been working in the case since
6 2010; correct?

7 A. Yes.

8 Q. So you receive regular updates from counsel and
9 review a fair volume of material that's filed in the
10 case; right?

11 A. Yes.

12 Q. So these reliance materials don't reflect
13 everything that you've reviewed in the case, but they're
14 the main materials that you looked at in terms of
15 preparing your report; correct?

16 A. Yes.

17 Q. Now you relied on the database; correct?

18 A. I did.

19 Q. Now, are these materials the sort of materials
20 that you would rely upon for all the other reports that
21 you've done and in all the other different situations?

22 A. Yes.

23 Q. And are they the sort of materials that experts
24 like you rely upon?

25 A. They are.

Direct - Rabinovitz

1 Q. When did you first receive the debtor's database?

2 A. After we were appointed we received the 2010
3 database and actually began work with it, until it was
4 replaced by the May 2011 database, when we moved to
5 replace that earlier database with a later one.

6 Q. And did you receive correspondence from the
7 debtors on the later database?

8 A. Yes. This came with the database, this letter.

9 Q. And that's dated 2011?

10 A. Right.

11 Q. And that's what's been referred to in the court
12 repeatedly, Your Honor, as the May 2011 Garrison
13 database.

14 And the letter provided you with a new database;
15 correct?

16 A. Yes.

17 Q. And if we can highlight the language. This is a
18 letter from Mr. Cassada, I believe. No. It's from
19 Mr. Krisko. "Garrison regularly updates its database
20 in the ordinary course of its business as it
21 receives new information about claims." Correct?

22 A. Yes.

23 Q. And it says, "This project is to verify the status
24 of claims is ongoing, but the enclosed database
25 currently reflects current information."

Direct - Rabinovitz

1 A. Yes.

2 Q. Did you rely on the May 2011 database in preparing
3 your report for the Court?

4 A. We did.

5 Q. Can you explain to the Court why it's important
6 that all experts are relying on the same database, even
7 though they may take the data and analyze it and put it
8 in their own analytical database and draw their own
9 conclusions to present to the judge? Why is it important
10 they all start with the same data?

11 A. This is something I have come to call achieving
12 second level agreement. The databases that are being
13 analyzed by different experts have to be the same.
14 Because if they are not, there's probably going to be
15 chaos because the court can't tell whether the things
16 that differ in the analysis are a consequence of
17 different analytic routines from the analytic database,
18 or whether it's just the data that is going in that is
19 different.

20 And at various times different courts in these
21 processes have been asked by various parties to assure
22 that. Going all the way back to Dalkon Shield, there
23 were fights about the database. Judge Merhige assigned a
24 neutral, and there were questionnaires. Judge Marriage
25 assigned a neutral. And when all of us wouldn't stop

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1 fighting about some particular question, we took that
2 question about the database to the court. But by the
3 time we got to estimation, the materials we were working
4 on to start were identical. And we did different things
5 with them, very different things, but the base
6 information with which we were working was uniform, all
7 the way up to ASARCO which, actually, we provided -- it
8 was a late set of data involving a bar date
9 questionnaire. We were ASARCO's experts. We did the
10 analysis and circulated that data to other parties. In
11 the end, we didn't use that data but other parties did.

12 Q. Now, in all these cases it's going to be the
13 company that has the data; correct?

14 A. Yes.

15 Q. The traditional data. You're aware there was a
16 questionnaire that was submitted to a number of
17 Mesothelioma claimants in this proceeding?

18 A. I am.

19 Q. Do you call that the PIQ process?

20 A. Yes.

21 Q. Did you receive access to the PIQ?

22 A. Yes.

23 Q. Were you concerned or have any concerns about the
24 use of the PIQs in your report?

25 A. Yes. We pulled some of those to review and found

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1 that internally it was easy to make different kinds of
2 decisions about the information that had been provided.
3 An individual might say that he had been exposed at a
4 particular site but then, when you look further, that
5 site was not listed on his later responses. There were
6 all kinds of conflicts. And we are not a jury. We are
7 not equipped, really, to evaluate in any final way those
8 questionnaires. And so except to get more information
9 and think about other things, we did not formally use
10 them in our estimate. We relied on the database which,
11 for us in any case, is usually the Gold Standard.

12 Q. Was there any process subsequent to your receipt
13 of the letter where the debtors sent you another letter
14 saying we've gone through the PIQs; this is what we think
15 the changes should be. We'd like to sit down with
16 everybody to make sure that everybody is on the same page
17 and those changes should be made. Did that ever happen?

18 A. No.

19 Q. I want to turn to your opinions. Opinion number
20 one, number of Mesothelioma claims against Garlock. Can
21 you explain quickly what this shows to the judge?

22 A. There are two cases that we've estimated are our
23 base case or preferred case which shows liquidated and
24 disputed claims about which we think the Court should
25 know pending and future claims. And you can see there

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1 that that amounts to about 26,000 claims, rounding. We
2 have an adjusted indemnity case which affects the pricing
3 of the claims. But the number of claimants does not
4 change, so it's identical here. The other piece of
5 information which is on this chart is we have used, a
6 five-year calibration period. The Court has heard a bit
7 about calibration periods up to this point, and I'm sure
8 we'll discuss them further.

9 Q. Now that's the total number of claims that you
10 project present and future and liquidated and disputed.
11 Is that total number less than Dr. Peterson's number?

12 A. I think it is.

13 Q. Is it less than the number that Dr. Bates at least
14 starts with at the beginning of his analysis?

15 A. Yes.

16 Q. Now the numbers stay the same in terms of claims,
17 actual number of claims, but you have these two
18 categories, base case and adjusted indemnity, that's
19 going to make a difference in terms of value. Can you
20 explain to the Court what's happening there?

21 A. Yes. We wanted to account for two arguments that
22 frequently occur now in asbestos estimation. One is, and
23 it's been heard here before, that as the claimants age,
24 their claims become less valuable. As one of those aging
25 people, I personally don't share that. But Judge Fullum

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1 did in the Owens Corning case. And in the quote we read
2 you can see that one of -- I'm not sure it's in the
3 quote. But he, through our lawyers, talked to
4 Dr. Vasquez and I, and he adopted what was there in
5 Dr. Vasquez's opinion on how you treat the age variable
6 and asked us if we would re-compute our data, taking into
7 account the declining value as the claimants, the people,
8 we'll talk about the claims separately, but as the people
9 aged. And we did that to provide information to the
10 Court. I'm not going here to exposit on why. It
11 actually is very hard to show that age is that kind of
12 defining variable or get into there the reliance of
13 Dr. Bates on age. But suffice it to say, we have an
14 adjustment where we took that argument into account.

15 The second adjustment we made is for what we call
16 the zero cases or the 6-plus cases. There's another
17 common argument that cases which remain on the solvent
18 company's books for very long periods of time are less
19 likely to settle. Again, we have our own complex models.
20 This happens all the time. Some claims will remain. The
21 question is, what do you think about them? It is not
22 always the case that those older claims do not settle.
23 Some of them do. It is not always the case that they
24 settle for less than other claims. Some of them settle
25 for very large amounts in general. But, it's a common

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1 argument that -- and it has been made here that the older
2 claims have less value. So we created an adjusted case
3 in which we zero out, as an analytic matter obviously,
4 all of the claims which are six years or older in the
5 database. And those two adjustments are reflected in our
6 valuation.

7 Q. So let's turn to that. From your explanation,
8 that would result in a lower number because you're taking
9 out those claims; correct?

10 A. Correct.

11 Q. Now Your Honor, these are the totals from the
12 claims that we just saw. The prior slide was the number
13 of actual claims themselves, and now we have the amounts
14 that are derived from those claims.

15 Your report has nominal and NPV; correct?

16 A. Yes.

17 Q. Your Honor, we're just focusing on NPV because I
18 think that's the number that everybody's been using. So
19 we're comparing apples and apples, but the report does
20 have both for your review.

21 This picks up the prior slide, correct?

22 Liquidated and disputed, pending and future; correct?

23 A. Yes.

24 Q. And, again. Uses the five-year calibration
25 period.

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1 A. Yes.

2 Q. These are only Mesothelioma claims; right?

3 A. Yes.

4 Q. The number, the total numbers, would obviously
5 increase if we added in lung cancers and others; correct?

6 A. Yes.

7 Q. Have you done that calculation?

8 A. No, not in any final way. We stopped when the
9 Court decided that the focus would be on Mesothelioma and
10 that most of the value might be on Mesothelioma.

11 Q. So you just did what the judge asked you to do;
12 correct?

13 A. Yes.

14 Q. Now Your Honor, those are the final two opinions.
15 And what I want to do now is go through the methodology
16 that Dr. Rabinovitz uses to derive those numbers. Some
17 of this will be familiar to the Court from Dr. Peterson's
18 presentation, but I think it's important to go through it
19 because there are some differences.

20 This shows your methodology; correct?

21 A. Yes.

22 Q. We're going to go through each of the six steps.
23 Now, what is step one?

24 A. Step one is estimating the size of the population
25 exposed to asbestos. And that, as you've heard in the

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1 court, thank the Lord, was done for us by Drs. Nicholson
2 and Selikoff, who estimated that there were about 27
3 million people who had been exposed to asbestos at the
4 time that they did their estimate.

5 Q. And that's people who worked in environments where
6 they were exposed to asbestos; correct?

7 A. Yes. Drs. Selikoff and Nicholson focused on
8 industrial exposures.

9 Q. So the sort of exposures that you would get around
10 insulation and gaskets; correct?

11 A. Correct.

12 Q. Now you used the Nicholson KPMG model; correct?

13 A. Yes.

14 Q. And KPMG stands for what? It's an accounting
15 firm; correct?

16 A. It's an accounting firm.

17 Q. And Dr. Bates used to work there.

18 THE COURT: It stands for Phil Mickelson, doesn't
19 it?

20 (Laughter.)

21 BY MR. GUY:

22 Q. And Dr. Bates was employed there at some point?

23 A. Yes.

24 Q. How does the Nicholson KPMG model differ from the
25 original Nicholson model?

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1 A. In a couple of major ways. Dr. Vasquez presented
2 a variation on the original Nicholson model in the
3 National Gypsum litigation and it made a couple of
4 adjustments which we thought were appropriate. One, and
5 maybe the most important one, is that Drs. Nicholson and
6 Selikoff -- I'm just going to say Nicholson.

7 Dr. Nicholson did this work before the issuance of the
8 Bureau of Labor Statistics' data associated with the 1980
9 Census. This work was actually done in 1978. And when
10 National Gypsum came along, one of the things Dr. Vasquez
11 and his team did was use the actual Bureau of Labor
12 Statistics data from the Census, which was then
13 available, to update the estimates of the industrial
14 labor -- the appropriate industrial labor force which had
15 been exposed. So that was a central and, we think,
16 useful update, and that really drove our acceptance of
17 that model.

18 Q. And that model's been used repeatedly by acclaimed
19 experts such as you; right?

20 A. Yes.

21 Q. And you've relied on this model in your estimates?

22 A. Yes.

23 Q. And you've relied on this model where you have
24 testified and been accepted by courts; right?

25 A. Yes.

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1 Q. Such as Celotex; correct?

2 A. Not Celotex. In Celotex the data got all
3 destroyed, and so each of us had to think up unique ways
4 of doing the estimate. I did it as a proportion of
5 Manville in which the proportion was determined by their
6 share in the formula used to divide responsibility in the
7 so-called asbestos claims facility. But Dr. Peterson and
8 I both did a search and there wasn't any data. He used
9 comparable companies and I used this other method.

10 Q. You used the same model; correct?

11 A. Yes.

12 Q. And Thorpe Insulation, Owens Corning, Quigley and
13 Western Asbestos you used the same model; correct?

14 A. Yes.

15 Q. Does that model in your field recognize it as a
16 reliable model to use in asbestos claims estimates?

17 A. Yes.

18 Q. And it's the fundamental basis of the model that
19 Dr. Bates uses; right? He changes it somewhat, but it's
20 the bases for his model; correct?

21 A. That's a complicated question. And since his
22 estimate and ours are pretty close together I chose not
23 to have the Court buried in that discussion. But as
24 you've heard here today, there are some questions about
25 updating that model which are beginning to appear. And

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1 we actually have a consultant who did some work on
2 updating the model. The most obvious flaw is that
3 mortality rates are declining, people are living longer,
4 and that's not reflected in either the original Nicholson
5 model or Nicholson KPMG. So what it will do is suggest
6 probably that Dr. Peterson may be closer to right with
7 the original Nicholson model than with the -- than with
8 those of us who use the KPMG model.

9 Also, Dr. Bates' model is actually rather
10 different. But we chose -- we do have a consultant on
11 this very technical area, and we chose not to vary the
12 models because both Nicholson and Nicholson KPMG have
13 been accepted by the courts. And until such time as
14 we're ready to go a very, very lengthy and technical
15 activity like publishing and hearing about the
16 alternative models, we chose to stay where we were.

17 Q. Now Dr. Rabinowitz, I had asked you about whether
18 Dr. Bates uses as the foundation of his work that model
19 and you had answered, I think, believing that I had said
20 Dr. Peterson. But would the answer be any different?

21 A. Well it's the foundation of all of what we use.
22 Dr. Bates' model has actually moved off the Nicholson
23 format. It's somewhat different. But it starts with
24 Nicholson, as does Dr. Peterson's model. No. I was
25 answering the question. I heard the question. I was

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1 demurring from the fact that I don't believe Dr. Bates'
2 model is exactly what either Nicholson or Nicholson KPMG
3 would be. But we didn't raise it. Courts have adopted
4 both; not Dr. Bates' new model, however. We chose in
5 full knowledge not to complicate the problem.

6 MR. CASSADA: Excuse me. I don't want to
7 interrupt the examination. May I have a standing
8 objection on any opinions that are expressed by
9 Dr. Rabinovitz that have not been included in her report?

10 THE COURT: That's fine.

11 MR. GUY: I won't respond to that, Your Honor.

12 BY MR. GUY:

13 Q. Let's turn to the next slide which is slide number
14 two. Now we the first part of this, Your Honor, was the
15 whole population t of the United States that would be
16 exposed to asbestos in occupational settings. Now we're
17 trying to determine the percentage of those people who
18 are going to develop Mesothelioma; correct? And again,
19 you rely upon Nicholson KMG -- KPMG?

20 A. Yes, we do.

21 Q. And if we could go to the forecast.

22 A. Yes.

23 Q. Your Honor, this is a little difficult to read.
24 Can you explain to Judge Hodges what those numbers
25 represent very quickly?

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1 A. These are the claimants. I was going to say these
2 are the future claimants but some of them have
3 undoubtedly appeared. This is the number of deaths from
4 Mesothelioma by year expected using the Nicholson KPMG
5 format.

6 Q. So, for example, you would expect to see 2,433
7 meso deaths on the first year; correct?

8 A. Well, looking back to 2003, let's talk about 2013
9 or 2014.

10 Q. All right. So that's the estimate we'll use as an
11 example in the future. 2017.

12 A. Right.

13 Q. 1,447? That's a very low number; correct? So you
14 have 27 million people, and only that many people are
15 likely to develop Mesothelioma under the Nicholson model?

16 A. Well, yes. Thank goodness that most people who
17 were exposed to asbestos do not get Mesothelioma. As
18 people have said repeatedly, it's deadly and difficult.

19 Q. Now Dr. Bates' model, which is slightly different
20 than this, predicts more Mesothelioma claims; correct?

21 A. It does.

22 Q. But his model, does it have similar percentage
23 claiming rates, i.e., most of the claims occur in the
24 early years?

25 A. This is not the claiming rates. This is the

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1 forecast of people who will --

2 Q. Forecast of claims?

3 A. -- get Mesothelioma, again, which we are going to
4 compute claiming rates.

5 Q. I'm sorry. I misspoke. Does his forecast also
6 show similar numbers as this?

7 A. Well his total is a little higher, so I don't know
8 what the distribution is. Sitting here today, I can't
9 tell you what the year-by-year distribution is.

10 Q. Now I'd like to turn to step three. That's the
11 one we just touched upon. That's the rate of claiming.
12 What exactly is that and how do you calculate it?

13 A. As, I think, several people have said, this is the
14 propensity to sue. And we compare the claims filed
15 against Garlock to the Nicholson forecast.

16 Q. And what is the data that you relied upon?

17 A. We rely on the May 11, 2011 database.

18 Q. What is the claim rate?

19 A. The claim rate is the result of that division.
20 Here on this slide you can see that. And we're just
21 showing, for illustrative purposes, this chunk of the
22 years. In the first column are the deaths, that's the
23 Nicholson KPMG forecast deaths. And then in the second
24 are the historical claims for Mesothelioma that have been
25 made against Garlock. In the third column or fourth

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1 column, including the years, are the year-by-year
2 percentage. And then at the bottom we're trying to
3 decide what the calibration period should be. And so
4 we've said here if we use three years, it would be about
5 84 percent. If we used four years, it would be about 80
6 percent. And if we used five years, it would be 79
7 percent.

8 We've chosen to do our analysis with the lowest
9 number because it's really more reliable to work with a
10 larger database. So we tend to not want to decrease the
11 size of the database if we possibly can. So there are
12 higher figures here, as you see, but what we're using is
13 the five year average, not the three or four year
14 average.

15 Q. Now, in simple terms, this shows that of people
16 who have Mesothelioma, more and more of them are
17 asserting claims against Garlock; correct?

18 A. Yes.

19 Q. And does that reflect what you saw in your work in
20 the post-2000 timeframe of what I believe Garlock's
21 referred to as peripheral defendants being targeted by
22 plaintiffs?

23 A. Well, yes, that's what it shows. But I wouldn't
24 talk about peripheral defendants and so on. I think that
25 that image has been simplified to the point of oblivion.

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1 I mean, one of the things here, I tend to think of this
2 as an industry. And there are some players in that
3 industry who haven't been mentioned yet, a lot of whom
4 are my clients and their parents that is EnPro to
5 Garlock, not just Garlock.

6 So this system includes -- and Aetna Life and
7 Casualty, the insurer. Not anymore in Aetna's case.
8 They only do health now. But there are some players that
9 haven't yet entered the dialogue.

10 Q. Can you explain to Judge Hodges the calibration
11 period and why you specifically picked the five year
12 period that you picked, which is 2005 to 2010?

13 A. Right. The 2005 is part of the year to get to
14 five years because, obviously, there were months -- it's
15 to round out the five years. There should be a chart
16 there that shows one. There we go. You can see here in
17 the column called "pay rate" that in 2005 Garlock went,
18 for whatever reason, into a different mode of handling
19 these cases than it had been in the early years.

20 So you can see in 2000 through 2004, it was
21 basically paying all or almost all of the cases that it
22 received. Something happened in 2005. I could speculate
23 about what it was, but I'm not going to, and their mode
24 changed. And so after 2005, what I sometimes call the
25 positive pay rate, people who got money drops. It comes

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1 up a little from 2005 when the strategy was changing and
2 then remains well below the 94, 95, 94, etcetera, of the
3 2000 through 2004 period. So that looked like a history
4 in which the recent claim payment patterns were very,
5 very different than in the early years. And we chose,
6 therefore, to use that period of recent history to
7 forecast into the future.

8 The other thing you can see here is the difference
9 between settled and indemnity and closed indemnity.

10 Settled indemnity is, again, these are people who got
11 paid. And those are the average amounts per year for
12 people who got paid in that year. I was here for part of
13 Mr. Magee's testimony and he kept talking about driver
14 cases. And what I understand driver cases to be -- I
15 mean if I'm wrong, you can say that. But associated with
16 the resolution of a big case comes not only other cases
17 but the voluntary dismissal of a bunch of cases by the
18 plaintiff's lawyer, and these are the zeros. So the
19 column on the right for closed indemnity is telling us
20 after you take those into account what the averages look
21 like. We're adding or dividing the zeros to the last
22 column.

23 Q. So the settlement amounts that have been paid by
24 Garlock are increasing; correct?

25 A. Yes.

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1 Q. Then stabilizing. The pay rates are decreasing
2 and then stabilizing, is that fair?

3 A. Right.

4 Q. If you used the earlier pay raise then that would
5 make your estimate higher; correct?

6 A. Yes.

7 Q. Now does the Eagle-Picher case provide you any
8 guidance in your work on this issue?

9 A. Yes. The judge in the Eagle-Picher case, very
10 early on, provided a series of guidelines for doing
11 estimation --

12 MR. CASSADA: Your Honor, I object to the witness
13 expressing any opinion about the law.

14 THE COURT: Overruled. Let's let her testify to
15 her understanding. Go ahead.

16 THE WITNESS: These were not -- these were
17 directions to experts there, and they were a series of
18 methodological directions which is why they attract my
19 attention. And he said that one of the rules that should
20 be used in estimation is that estimators should use the
21 most recent history adjusted, of course, for any
22 discussions about big changes that occurred in that
23 recent period. So I am -- I don't regard myself as a
24 lawyer. I'm not a lawyer. And I think that part of his
25 opinion was directed at Dr. Bates, Dr. Peterson and at me

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1 and at others, at the estimators.

2 Q. How can Judge Hodges be comfortable -- how are you
3 comfortable that the five year window that you chose is
4 predictive of future values?

5 A. Well I think that the recent history is the best
6 because it already takes into account all the series of
7 events which have occurred up to that point. All of the
8 people who are negotiating these cases are familiar with
9 those details. And I'm sure in their negotiation, none
10 of the very fine lawyers on either side has missed the
11 opportunity to point to some recent event or activity or
12 scientific research or something else which has occurred.
13 So the recent years take into account in the values which
14 the company and the plaintiffs' lawyers have negotiated a
15 whole series of those things.

16 Q. It's your belief --

17 THE COURT: Temporal propinquity, Mr. Guy.

18 MR. GUY: It is, Your Honor.

19 THE COURT: Excuse me. It's Friday and I'm
20 getting punchy.

21 MR. GUY: Believe me, I'm trying to move this as
22 quickly as possible. In our defense, we've only spent
23 two hours to date.

24 THE COURT: I understand.

25 BY MR. GUY:

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1 Q. Dr. Rabinovitz, I want to move on to ask you step
2 four now. Now, we've done the first three steps. What
3 is the fourth step?

4 A. We're now going to value the pending and the
5 future claims.

6 Q. And what data did you rely upon to do that?

7 A. Here is the record of the calibration period.
8 We've now chosen a calibration period. And we know how
9 many claims there are, what the positive pay was, what
10 the pay rate was and, therefore, what the average
11 indemnity values are by year paid and overall. Just
12 because we'll need it later, note that only 54 percent of
13 the claims that were resolved in this period were
14 actually paid and that using the zeros, the average for
15 the five year period is about \$39,000.

16 Q. And there's been a lot of discussion in this case
17 about trends, changing or causation, science, disclosure
18 requirements. Is there anything that you've learned
19 throughout your work in this case that changes your view
20 as to whether that's the appropriate calibration period,
21 the most recent five year history?

22 A. No. We thought about it. I mean we -- there was
23 a period where we always used to talk about if the FAIR
24 Act passes, and it didn't. So, we go on.

25 Q. So you multiplied the indemnity value by the

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1 number of claims; correct?

2 A. Correct.

3 Q. And you got the number of claims from the
4 Nicholson forecast; correct?

5 A. Correct.

6 Q. And that shows, Your Honor, where these claims
7 fall in terms of distribution and timeframe. And this
8 shows the future claims; correct?

9 A. Yes. And one thing -- everybody, when faced with
10 the way we go on into the very long-term future, is
11 concerned about how we can predict that far. One of the
12 things -- the reason we put these breaks in is that,
13 well, maybe -- oh. On the bottom you can see the 27,000.
14 Well you can't but I can. And you can see that in the
15 first ten years you get, if we're right, 12,500 claims,
16 and then it goes up to almost 18, 19,000. So of the
17 total of -- this 21 or 27? It looks like 21.

18 Q. 21.

19 A. Of the total, the first sets of years are really
20 dispositive. After that the numbers should drop off so
21 it's not as offputting as it would be if we were talking
22 about 50 years as we usually do, or 49 years. Most of
23 this occurs by 2019 or 2029.

24 Q. Does that help you determine that the prior
25 period, the prior five year period, is reliable predictor

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1 because, really, most of it is going to fall in the next
2 ten years?

3 A. Yes.

4 Q. You will be pleased to know, Your Honor, I'm
5 taking things out.

6 I think you said, and I want to be sure, that the
7 Nicholson model that you're using could be an
8 underestimate. Correct?

9 A. Yes.

10 Q. Because of the age issue?

11 A. Because of mortality rates --

12 Q. Now, have you --

13 A. -- which are declining and allowing people to live
14 longer and more time to get Mesothelioma, unfortunately.

15 Q. Now have you made any attempt to adjust your
16 estimate to reflect the fact that Garlock made a product
17 that contained asbestos and sold it in the marketplace
18 until 2000?

19 A. No.

20 Q. Would that have an impact, an upward impact?

21 A. It might very well. Is that your 2000 or 2001?
22 Anyway, I accept what you -- more or less.

23 Q. Maybe 2001. Now I want to turn to something that
24 the Judge has already heard about; let's put it to bed.
25 These show up in your chart, your earlier chart. These

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1 are the "settled but not paid" and "disputed claims;"
2 correct?

3 A. Yes.

4 Q. How did you value those?

5 A. We asked Garlock for a list of each of those
6 categories of claims. And as is indicated in the long
7 and complicated appendices to our report, we got a bunch
8 of lists. And we tried as best we could to use those
9 lists, which were lists of plaintiff firms with numbers
10 and without numbers, and other lists of plaintiffs' firms
11 where Garlock had agreed to pay but hadn't paid. We did
12 our best to get the duplicates out and ended up with 246
13 claims that appear to be agreed settled but not paid
14 claims and 181 that appeared to be disputed. And then to
15 the extent possible we said here's what Garlock has
16 already agreed but has not paid out, and here is what the
17 disputed claims are worth. That, as a consequence of
18 lists that were sent us, not very detailed except for one
19 firm whose results we used. We then estimated for the
20 rest of them using the average Mesothelioma recovery that
21 individual firm had obtained in the past.

22 Now, Dr. Garcia's and Dr. Bates' is very critical
23 of us. And I said in deposition I'm not wedded to these
24 numbers. But from the viewpoint of the futures
25 representative, it is very important to get these numbers

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1 right. Because what tends to happen is that if a trust
2 is formed, the people who come in first are, of course,
3 people with contracts, the settled but not paid claims.
4 And then there are disputed claims, and the numbers of
5 these can get very, very large. In one of the
6 bankruptcies there were 50,000 of these, and somebody had
7 to sort through that process. Because we are in this
8 particular setting estimating for the futures, as I told
9 counsel in my deposition, we're simply putting this in as
10 a proxy for something we really need to happen. Because
11 if funds are deposited in a trust and \$21 million comes
12 off the table right away at 100 percent, it's really
13 going to affect the last person or the last groups of
14 people in a very negative way.

15 So we did the best we could. But on behalf of the
16 futures representative, we want to draw attention to this
17 group and hope that it can be not estimated but valued in
18 a way that will provide special funds for them right away
19 and not be removed because these are contracts right up
20 front, which is not by way of saying they don't deserve
21 to be paid up front. They do. Just let's get a handle
22 on what this number really is.

23 Q. Now Dr. Rabinovitz, when it says "disputed," that
24 means one side thinks they've settled it and the other
25 side doesn't?

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1 A. Yes.

2 Q. It's not that they're disputing whether there's a
3 claim at all; it's just their dispute at settlement?

4 A. Right.

5 Q. That number's not going to move the needle on your
6 estimate one way or the other; right?

7 A. No.

8 Q. Now I want to go to number five. We are moving --
9 getting closer, Your Honor.

10 Now you include the cost of defending asbestos
11 claims; correct?

12 A. Yes.

13 Q. How did you do that calculation?

14 A. We looked at -- first, we asked the debtor to
15 provide this information and they did. Then we
16 calculated it from the information that they provided to
17 us. And the figure we're using, the 34 percent, is the
18 percentage the defense costs are of both Mesothelioma and
19 lung cancer indemnity. If we looked at Mesothelioma
20 alone the percentage would be higher, but we recognize
21 that lung cancer cases have and probably in the future
22 will be -- this is where I expect this litigation to go
23 in the future. The lung cancer cases are expensive to
24 litigate, as are the Mesothelioma cases. So we took it
25 as a percentage of those two categories of injury. As I

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1 think somebody said here, the company did not keep its
2 defense costs by disease. So we had to make this
3 adjustment.

4 Q. So some portion of those total defense costs could
5 relate to nonmalignants possibly? Possibly?

6 A. Yeah. I mean all we're saying is if you look at
7 the indemnity that the company paid for Mesothelioma and
8 lung cancer and you calculate the defense costs as a
9 percentage, that's the percentage. It may be that
10 there's leakage for the other cases but this is today.
11 It wouldn't have been many years ago an approximation of
12 the percentage that defense costs represented indemnity
13 for the big stuff.

14 Q. Now Dr. Rabinovitz, do you remember earlier in the
15 case there was a slide showing that the defense costs
16 doubled over a certain period?

17 A. Yes.

18 Q. And maybe if we can call up Dr. Bates' report.
19 You colleague had prepared a chart on Dr. Bates'
20 cross-examination to show average value. Do you remember
21 that?

22 A. Yes. Dr. Sims, who is in the courtroom, assists
23 me, and he had prepared that chart.

24 Q. So that shows that the total defense costs were
25 doubling, right, from 1997 to -- well, more than doubling

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1 -- to 2009?

2 A. Yes.

3 Q. And Dr. Bates says the defense costs doubled in
4 two years as Garlock sought ways to establish the
5 evidence regarding plaintiffs' exposures without the
6 information that the plaintiffs used to provide as part
7 of their case. He goes on. Further, these costs
8 continued at the higher level, even though the number of
9 claims dropped through the decade to only ten percent of
10 their earlier annual rate. What it doesn't show there is
11 that the number of Mesothelioma claims against the
12 debtors almost doubled; correct?

13 A. Yes.

14 Q. Does it surprise you that defense costs doubled,
15 in light of the fact that the Mesothelioma claims against
16 debtors doubled?

17 A. No. But it isn't only -- I mean, if the number of
18 claims doubles, obviously, it becomes more expensive.
19 But on defense costs there are really a number of things
20 going on. Because I regard this as a mass tort, which is
21 what it is and not as a matter of individual adjudication
22 between a plaintiff -- I'm sorry, a plaintiff's lawyer
23 and a defense lawyer.

24 The way I want to think about defense costs is the
25 way I believe general counsels tend to think about it.

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1 That is, what's going on in the head of the general
2 counsel is he's going to spend some money on defense and
3 some money on indemnity. And if he's spending money on
4 defense, it's because he wants to make a point that he
5 thinks he has a good chance of winning in the legal
6 system so that in the future he can use that doctrine
7 when he settles all of his cases.

8 So the thing to look at is the total. And he'll
9 deploy that total as he sees fit, not case by case. But
10 to spend a lot of money in a strategic way in the hope
11 that what happens is the total remains the same. But if
12 he spends more on defense, the total on indemnity will
13 move down because he's had some victories. So I think of
14 defense costs in a different way.

15 Q. I didn't mean to cut you off but we have a hard
16 stop at 3:30. Dr. Rabinovitz, what are the reasons for
17 including defense costs?

18 A. First, I'm impressed, and it reminded me that
19 Dr. Bates has made an argument that defense costs were
20 critical to Garlock in its decision-making and, as a
21 consequence, it made me think this through better than
22 maybe I have in the past. Second, it comes in and out of
23 my estimates with debtors who are already visibly
24 insolvent. You don't need to pile on by adding defense
25 costs; Owens Corning would be such a case. So, sometimes

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1 it's in and sometimes it's out. It's always included in
2 the SEC filings. So we always do it with respect to
3 contingent liability before the SEC. Now, to be
4 accurate, we should -- we've heard it here in court. We
5 should recognize that some companies do what the
6 accountants do called accrue, which is means instead of
7 estimating and reserving against those defense costs out
8 into the future, they pay those off every year and report
9 them. But other companies estimate these with the claim
10 indemnity responsibilities and report them and reserve
11 against them in that way.

12 And finally, for me, they are a reminder to us, us
13 being Mr. Grier and me and the lawyers, that the trusts
14 are going to have administrative costs. And again,
15 because we're very penurious, not to say cheap, we want
16 to never forget that we need to put aside funds for
17 administration, which includes paying committees and
18 paying claims estimators and etcetera, etcetera, paying
19 financial advisors and all that stuff. It's not going to
20 go away. And because the groups of people at the very
21 end of this process are Mr. Grier's clients, until they
22 appear, we want to be sure that they don't get charged
23 for the up front costs in a way that hasn't been
24 recognized.

25 Q. Dr. Rabinovitz, I want to move now -- I want to

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1 skip to step six. That is the last of your steps, and
2 this is something that the Court's already heard
3 discussion on. You weren't here in the courtroom when
4 Mr. Radecki testified about calculations. Very quickly,
5 what are the inflation and time-money calculations?

6 A. Well we relied on Mr. Radecki but, basically, he
7 advised us that -- and it's obvious that going out we
8 have to account for inflation and we also have to account
9 for the discount rate. One thing I will say is there was
10 some talk about WACC, the cost of -- the Weighted Average
11 Cost of Capital. I think courts have pretty routinely
12 decided that companies' costs are --

13 Q. I think the debtor may have withdrawn that issue.

14 A. I'm sorry. Okay. Anyway, he provided us with
15 discount rates. The one thing that's different here is,
16 as I said at the beginning, in the adjusted indemnity
17 case we need a way to take account of the impact of age
18 on our forecasts. And we're not saying here in the
19 adjusted indemnity case that we're using different
20 inflation rates. We're taking a half point off the
21 inflation rate just to reflect the age effect going
22 forward. It isn't that we've changed anything.

23 Q. Now Dr. Rabinovitz, your inflation rate is lower
24 than Dr. Bates; right?

25 A. Yes.

Direct - Rabinovitz

1 Q. If you used a higher inflation rate, your number
2 would be bigger wouldn't it?

3 A. Yes.

4 Q. Your discount rate is certainly lower than
5 Dr. Bates; correct?

6 A. Yes.

7 Q. Do you believe that the discount rate reflects the
8 distribution of the stream of claims in terms of the
9 majority of the claims falling within the ten-year
10 window?

11 A. Yes, it is. What Mr. Radecki did was reflected
12 in that chart we had of the future claims marked off by
13 ten year periods. Really, most of these claims are going
14 to be awaiting valuation in a much shorter period than 50
15 years. It's not -- this is not Social Security or
16 Medicare. We're hoping to move this set of payments out
17 to go with the claims. So as Dr. Peterson had said,
18 these people can stop worrying about how their families
19 are going to be supported. So I believe his analysis is
20 correct to use a shorter period to look at the discount
21 rate. That's why it's lower.

22 Q. You relied upon the U.S. Treasury yields to create
23 the discount rate; correct?

24 A. Yes.

25 Q. You didn't make it up, did you?

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1 A. Not to my knowledge.

2 Q. Now I want to turn to the next slides. And this
3 is what it all comes down to, Your Honor. We have the
4 base case estimate with the total number of claims.

5 Right, Dr. Rabinovitz?

6 A. Yes.

7 Q. And the indemnity payments, and then the NPV and
8 nominal; correct?

9 A. Yes.

10 Q. That's the base case. We look at the next slide,
11 the adjusted case. Same calculation but a little bit
12 smaller; correct?

13 A. Yes.

14 Q. We're in the home stretch, Your Honor. We're
15 moving a little bit more quickly than we would otherwise,
16 but we're trying to get Professor Heckman on.

17 Dr. Bates has criticized you; correct?

18 A. Yes.

19 Q. In fact, there's a whole legion of experts who
20 have criticized you.

21 A. It comes with the territory.

22 Q. Now I want to discuss those criticisms, because
23 it's not exactly clear whether we're going to have enough
24 time to get back to them. You reviewed Dr. Bates'
25 rebuttal report; correct?

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1 A. I did.

2 Q. Now in his report -- and Your Honor, this chart
3 also shows up in the debtor's pretrial information brief
4 at the end, so we thought we would just address it
5 head-on. But at the top there, that's your initial base
6 case estimate; correct?

7 A. Yes.

8 Q. And Dr. Bates criticizes you for these items and
9 then reduces your number by the amounts that he's
10 allocated to those criticisms; right?

11 A. Yes.

12 Q. You've seen this before.

13 A. Yes.

14 Q. And at the very bottom he goes through each one of
15 these criticisms. And he -- at one of them he goes,
16 Presto. Actually, the right number should be \$300
17 million?

18 A. Yes, I see it.

19 Q. That's a lot less than his pre-petition estimate
20 that he prepared for the debtors, isn't it?

21 A. Oh, yes.

22 Q. Now let's walk through these quickly one by one.
23 Now the first thing he says is we should eliminate
24 payments for defense costs. And we went over that in
25 your methodology; correct?

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1 A. Yes.

2 Q. Do you have anything to add in terms of the
3 criticisms?

4 A. Just that he's the one who has emphasized the
5 importance of defense costs in the debtor's decision-
6 making.

7 Q. So those are the same issues that you've included
8 before.

9 A. Right.

10 Q. So, at a minimum, you believe that an independent
11 expert could be spared to add that number back in?

12 A. I do.

13 Q. That's consistent with all the work you do for SEC
14 asbestos; correct?

15 A. I do.

16 Q. I want to go to the next criticism which is
17 pre-petition settlements. What is this criticism and
18 what is your response?

19 A. As I said, again, I don't want to spend time, but
20 the futures representative has to be concerned of money
21 that goes out -- I'm sorry, with money that goes out at a
22 hundred percent the day that a trust opens its doors.
23 And we tried as hard as we could to estimate this, and
24 now we're being told that they should be eliminated.
25 That's part of the problem. We don't want them

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1 eliminated. We're not arguing that \$20 million is
2 exactly right, but no one should forget these claimants.

3 Q. This is a tiny number anyway in proportion to the
4 whole amount; right?

5 A. Yeah. But it's been a very big problem elsewhere.

6 Q. So, for example, the pre-petition estimates could
7 be \$40 million; it could be \$50 million. We don't know.

8 A. Absolutely.

9 Q. Your Honor, if we get that far, we're going to ask
10 the Court's assistance so we can pin that number down
11 because it is critical to the FCR. The next one is the
12 processing errors. That's an \$80 million block. Can you
13 explain to the Court your criticism there and your
14 response?

15 A. There are three claims in which Dr. Garcia told us
16 that we had used the wrong payment dates. I forget their
17 names. One of them is Puller. But he'll know and I can
18 look it up, and Dr. Sims will know. Just very briefly,
19 we used 2010. When he said this, we investigated further
20 and discovered that 2010 in the database was the year in
21 which Garlock had received contribution from trusts for
22 the three claims and therefore it was recorded as the
23 latest date. That's not what the database was telling
24 us.

25 Why do we use the last date? I think Dr. Garcia

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1 also said he always uses verdict date. We do not because
2 we know, and I think Mr. Magee testified, that there's a
3 lot of slippage between the verdict and the settlement
4 payments to this set of claimants. Lots of things
5 happen. You get a verdict. If you get a positive
6 plaintiff's verdict or the case looks threatened, the
7 company's going to settle that case. The verdict amount
8 may or may not be identical to what is actually paid to
9 the claimants which is why we use the very last date we
10 can find. Now in the --

11 Q. I'm sorry, Dr. Rabinovitz. Does it make any
12 difference, in light of the fact that the payment dates
13 all fall within your calibration period?

14 A. It does not. These people who we put in 2010 are
15 actually in 2006 and 2007, which means they're in our
16 calibration period.

17 Q. You're just relying, as always, on the debtor's
18 data. Correct?

19 A. Yes.

20 Q. Now what about this one where he says you've
21 overestimated the number of pending claims, you ignore
22 the PIQs, and you've used an incomplete and shoddy
23 database?

24 A. Here I think I've already said we looked at the
25 PIQs. We also looked up and set up the ballots. And

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1 you've heard testimony about what role, I think from
2 lawyers about what role the ballots do or do not play.
3 I've already said that the information in the PIQs is
4 often contradictory and really unique for a lawyer or a
5 jury to decide what the PIQs represent and what they do
6 not represent.

7 So we're going to use that May 20, 2011 database.
8 And if anybody wants us not to use that, they need to
9 come to us and to the Committee and say we're taking John
10 Jones out for the following reason. We're taking Mary
11 Smith out for the following reason; she's not X, she's Y.
12 We need to look at those documents and then if there's a
13 dispute get that changed. We would never make that
14 decision on our own.

15 Q. Now when you got the May 2011 database with the
16 letter from Mr. Krisko, that was different, very
17 different, from the 2010 database, wasn't it?

18 A. Yes, it was different.

19 Q. And you trusted the debtors that that information
20 was accurate.

21 A. We did. Because when we deal with debtors we know
22 -- one of the things that's usually screwed up is, pardon
23 my French, is that the number of zeros lags. Lawyers
24 don't like to report to companies the zeros because
25 there's no trial, there's no -- if the lawyer has settled

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1 a bunch of claims, his documentation of the zeros is
2 usually late. We need the zeros, so we remind all our
3 clients to go get those zeros. And we assumed that was
4 the kind of correction which was being made in the
5 database and just accepted it and moved from the 2010
6 base to the 2011 base. It didn't seem to us that
7 involved stuff like the PIQs contain.

8 Q. And the PIQs had all sorts of information in them
9 that the debtors were using for their -- for example,
10 Mr. Henshaw's analysis concerning exposure. That didn't
11 really have an issue for you in terms of your analysis of
12 the claims; correct?

13 A. Right.

14 Q. And there's a lot of noise around the PIQs. Do
15 you remember going backward and forwards and the
16 complaints about what Rust Consulting was doing and
17 wasn't doing?

18 A. Right. Offline I'll tell my Rust -- well, there
19 was -- in Celotex Rust reported at the end of --

20 Q. Dr. Rabinovitz, don't go offline.

21 A. Don't do it? Okay.

22 Q. Now I want to go -- you think that number should
23 be added back in, the \$80 million?

24 A. Yes.

25 Q. The next criticism is properly assigned payments

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1 to resolution. Again, this is only a \$20 million -- it's
2 silly to say "only \$20 million." But can you respond to
3 that?

4 A. Yes. I'll be quick. The criticism was we treat
5 the pending claims as if they'll be resolved in 2010 and
6 the future claims as being resolved in the year as they
7 are diagnosed. That's a simplified assumption. There
8 are so many things moving around here that for -- like
9 for something like this, we do it as a simplified
10 function. We re-ran it. It is true not all the pending
11 claims are going to be resolved by 2010 or as of the
12 first opening of a trust, and not all the future claims
13 will be resolved in the year that they're diagnosed. So
14 we re-ran this and it has no -- I mean I think Dr. Bates
15 says this is significant, and it's about two percent.
16 So, yeah, we made a simplifying assumption, but it's not
17 a big deal.

18 Q. So what they're really saying is you've got a
19 whole slug of claims that have been accumulating because
20 they were stayed and they've been accumulating during the
21 bankruptcy. And your model just assumes that once the
22 trust is in place they'd all be paid in 2010, according
23 to your model.

24 Q. Well, as inflated. That is, they're going to get
25 some inflation report or scheduling adjustment for that.

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1 We're assuming they'll get paid very fast. In the old
2 days the trusts used to be required to get going, all
3 kinds of trusts, in six months to get -- that was a
4 little unrealistic. So, it is a simplifying assumption,
5 but the results are not significant.

6 Q. And the same would be true for the fact that
7 future claims are resolved in the year they're diagnosed?

8 A. Right.

9 Q. Let's move to the next criticism. So you would
10 add the \$20 million back in?

11 A. Yes.

12 Q. Let's go to adjust for age of claims at
13 resolution. And Your Honor, obviously, we want to add
14 all of these back in. But what we're trying to show here
15 is why it's reasonable to add them back in.

16 Can you explain the criticism and why it's
17 reasonable to add that number back in?

18 A. This is what Dr. Bates called "vintage." And as
19 indicated here, we're already assuming that close to half
20 of the pending claims will not be paid anyway. And in
21 the adjusted indemnity case, where we took account of the
22 hypothesis that the longer claims have been sitting
23 without being resolved, the lower the likelihood that
24 they will be resolved. We've assumed 60 percent of the
25 pending claims will not be paid.

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1 So we think our way, and we've taken both of these
2 elements into account in the adjusted indemnity version.
3 But I'd hesitate to say that sometimes these two claims
4 come back. And particularly for Mesothelioma claimants,
5 a lot of them in the real world actually settle for very
6 high amounts. And Dr. Sims did some work in this well
7 particular sub-category and discovered that if you look
8 at the distribution of closed and open claims by years
9 pending, from the actual data they're remarkably similar.

10 So we did take this into account because it comes
11 up in these estimations, but I don't think we get very
12 excited about it.

13 Q. All right. The next -- so we would add that back
14 in. And now this one, consistent inflation and discount
15 rates is \$140 million. What is your understanding of
16 that criticism, and what is your response?

17 A. Actually, first, I defer to Mr. Radecki whom all
18 of you have heard from. But in fact, what ends up
19 getting used is very similar. And as we've said, what
20 Mr. Radecki did with the discount rate actually matches
21 the pendency of -- or passage of time in future years.
22 It isn't Social Security and, therefore, the rates for
23 something like the Social Security system are different.

24 Q. And you had mentioned about the WACC, but the
25 Court hasn't heard it and it doesn't seem like it is

Direct - Rabinovitz

1 going to hear about the WACC rate, so I don't want to
2 waste time on that.

3 Mr. Radecki has already testified and explained
4 how he came up with the inflation rate and discount rate.
5 Are you relying upon Mr. Radecki's calculation?

6 A. I am.

7 Q. So we'll add that back in.

8 Again, it's not a huge amount, but it all adds up.
9 Jurisdictional claims. What is that criticism, and what
10 is your response?

11 A. The criticism is that in the pending claims there
12 are fewer claims from expensive states, California, my
13 state, and New York, my original state, than is the case
14 in the historically settled claims. That means that the
15 averages from the historically settled claims are too
16 high for projecting the future. And so Dr. Bates has an
17 elaborate weighting system that he wants us to apply. As
18 indicated here, this is one of a whole series of
19 dimensions that could be adjusted specifically, a lot of
20 which cancel each other out. We like, as I have said
21 previously, to have as much data as possible as we
22 calculate various dimensions. And here we prefer to
23 stick with the total number of claims, and there are
24 about 17,000, rather than decreasing this and making a
25 little box for California and one for New York.

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1 And the third reason: Since I'm a policy analyst,
2 I'm really always thinking about, let's focus on the real
3 world because we're going to have to do something. What
4 I'm really trying to do is to try and produce something
5 useful in cases where there are disputes. These claims
6 move. California's having budget problems and it's
7 closed a whole slew of courts at the state level because
8 it's saving money on the court system. And what's
9 happening is that these claims are moving out of
10 California as we speak, particularly out of Los Angeles,
11 and going off to other jurisdictions.

12 Q. Dr. Rabinovitz, this is a fluid process? That's
13 what you're saying?

14 A. Absolutely. These claims move around. There are
15 more dramatic examples. Venue laws change.

16 Q. I'm sorry to cut you off but we're going to run
17 out of time with this arbitrary cutoff we have to deal
18 with so that we can incorporate Professor Heckman.

19 Now you saw Dr. Peterson's explanation of this
20 setoff issue. Do you agree with his explanation in that
21 regard?

22 A. Yes.

23 Q. Let's move to the last criticism which is a rather
24 large number, \$320 million. Dr. Peterson's talked about
25 that at length, but we just want to move quickly on this.

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1 What is your response to the criticism that there should
2 be an adjustment for trust claim filing information?

3 A. I actually have an extra one here. The trust of
4 FCRs. As I have already said, these trusts have been
5 paying claims for a while. Presumably, plaintiffs and
6 defendants are taking them into account. And Garlock's
7 historical experience, at least for the most recent five
8 years, reflects what's being paid. I've been looking to
9 find out as much as I can, in general, what is happening
10 as we move into an era in which the trusts will be making
11 large payments to a variety of claimants.

12 My experience with current solvent defendants is
13 that the presence of these payments hasn't decreased
14 their costs. I look to mention Jenny Biggs and the
15 Towers Perrin folks, casualty actuaries. They report
16 every year at a conference and I collected their reports.
17 And they're saying the same thing, that they're not
18 seeing declines in the liability costs for solvent
19 defendants.

20 They report -- they're casualty actuaries. They
21 report on what the insurers are doing too, and the
22 insurers are raising their reserves. Now, I can't tell
23 you whether that's because they tend to understate their
24 reserves or the current experiences what they call
25 unfavorable, which means they're paying out a lot of

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1 money. But I think both are probably true. So reporting
2 for the insurers says that things are not declining in
3 cost for the solvent defendants. The one thing I'd add
4 here is there's a piece of this, which both Dr. Peterson
5 and Dr. Bates talked about as if all funding was
6 disappearing from the system as companies waited for
7 their bankruptcy processes to play out.

8 The other empty chair has been in the discussions
9 of this intensely and well developed market are the
10 parents, the Pittsburgh -- the PPGs for Pittsburgh
11 Corning, the Halliburton's for Dresser, Circor for
12 Leslie, and I could go on and on. Pre-petition, in
13 prepackaged bankruptcies, those parents are promising to
14 settle huge blocks of claims often in order to make the
15 negotiation work and in order to get a 524(g) release for
16 themselves. There's a lot more money in this system,
17 despite the formation of the bankruptcy trusts not only
18 from the insurers but from my friends, the parents.

19 Q. Now, Dr. Rabinovitz, we've heard testimony in this
20 court, I believe from one of the debtor's experts, that
21 there are widespread disclosure requirements already in
22 place throughout the various states, including, for
23 example, New York, that have been in place for a long
24 time. Are you familiar with those disclosure
25 requirements generally?

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1 A. Generally.

2 Q. Do you believe that to the extent parties are
3 aware of the existence of trusts, which they would be
4 because they're public; right?

5 A. Yes.

6 Q. That these sophisticated parties are taking that
7 into account when they resolve cases?

8 A. I believe so.

9 Q. And you did say earlier, in 2007, that you thought
10 that there would be a downward pressure on settlement
11 values because of the availability of trust funds, didn't
12 you?

13 A. Yes. And I said the FAIR Act would pass and the
14 Asbestos Claim Facility, which we were the consultants
15 for the insurance industry would last; I've been not
16 right about those things.

17 Q. And in 2013 that just didn't turn out to be true;
18 correct?

19 A. Not so far.

20 Q. Unfortunately.

21 Now, I want to turn quickly, in the time left to
22 us, to your criticisms of Dr. Bates. And Your Honor,
23 we're obviously not going to be able to cover all of
24 them; we do have a rebuttal report. So just to close
25 out. Notwithstanding Dr. Bates' various criticisms, do

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1 you believe, as an independent expert, that your
2 prediction for current and future claims and the total
3 amount there is a reasonable and reliable estimate of the
4 amount that Garlock would need to satisfy those claims?

5 A. I do.

6 Q. Now moving to your criticisms of Dr. Bates.
7 You've reviewed his report; correct?

8 A. I did.

9 Q. And in your rebuttal report you have two tables
10 that we've put together, Your Honor. You prepared these;
11 correct?

12 A. Yes.

13 Q. And you prepared these to assist the Court in
14 understanding where the differences lie between Dr. Bates
15 and Dr. Rabinovitz. And you have one table for present
16 claims and one table for future claims; correct?

17 A. Yes.

18 Q. And we won't have time to go through those in
19 detail, Your Honor. But so you have them later, let's go
20 to the second table. It's showing the difference in the
21 assumptions that Dr. Bates is making and what impact
22 that has --

23 A. Yes.

24 Q. -- and the Court's heard a lot about that. So it
25 has the verdict rate of 8.3 percent; correct? The

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1 claimant rate and the allocation rate. And there are
2 differences there; correct?

3 A. Yes.

4 Q. And that results in differences in the numbers,
5 doesn't it?

6 A. Yes.

7 Q. Now, I prepared a slide that summarizes your
8 criticisms. I want to put that up. Now we need to move
9 quickly on this, but I think we have 20 minutes or so.
10 Understanding we have that much time, can you explain to
11 the Court -- and this is really at a very high level, not
12 in the sort of technical, statistical level of detail,
13 but a high level, why you don't believe Dr. Bates'
14 estimate is a reasonable and reliable estimate.

15 A. First, as indicated here, the method is unaccepted
16 and untested. It hasn't been used except in Bondex where
17 Dr. Mullin used it -- it's not identical, but where he
18 used it and it was rejected by the Court. So this is a
19 theory and not a widely used, repeatedly tested
20 methodology, unlike what we're using which has been
21 tested by companies; that's been tested by bankruptcies,
22 etcetera.

23 Q. And the second one? Go ahead, Dr. Rabinovitz.

24 A. Second, it's producing results which are
25 completely different than what actually happened over the

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1 ten years that precede the bankruptcy. Third, as
2 Dr. Peterson has indicated, Garlock had a particular role
3 as an asbestos defendant which Dr. Bates doesn't take
4 into account. One of the things that has maybe not been
5 emphasized enough is their product remained in the market
6 for longer than is true of many other companies. I
7 thought it was 2001. Somebody -- maybe you, Jonathan,
8 said it was 2000. But that also affects what I think
9 will happen in the future.

10 We've already seen on a technical basis this PIQ
11 process which Dr. Bates used to exclude claims that are
12 pending from the database. He's entitled to his analytic
13 routine. I don't have any problem with that. But I,
14 myself do not want to make that judgment and do not think
15 that any of us estimators are qualified to make that
16 judgment. That's the province of juries and courts and
17 defense lawyers and plaintiffs' lawyers to value and
18 weigh all that information.

19 Then, as those prior comparison charts show, he's
20 using 367 Mesothelioma verdicts to estimate key elements
21 of his model, and they're not even all Garlock verdicts.
22 So, I question what is being introduced by the use of
23 those verdicts.

24 Q. Dr. Rabinovitz, is it accurate that all but 24 are
25 not Garlock verdicts?

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1 A. Yes.

2 Q. So when it really comes down to it, his model
3 relies on 24 Garlock verdicts?

4 A. Yes.

5 Q. How does that compare to the database you used to
6 prepare your estimate?

7 A. Well, we're looking at everything. We're looking
8 at thousands and thousands of claims, most of which were
9 settled, along with this handful of verdicts. That's
10 what we're usually looking at.

11 Q. Now Dr. Rabinovitz, I think the Court has heard
12 already about the adverse verdict rate and why that's not
13 representative, and the liability share and why that's
14 not representative. I want to focus on the last two for
15 you, the first being all the cases that were settled for
16 under \$200,000, all Mesothelioma cases, all people who
17 are going to die or have died, have no trial risk. From
18 all your experience, 40-plus years in the asbestos arena,
19 can you help the Court understand whether that is
20 reasonable?

21 A. Garlock always has trial risk from these cases. I
22 mean, this is an industry where different people come in
23 and out. Firms form, firms break apart and new firms
24 form. There's very little -- you know, the archaeology
25 which has been done on sites, for example, is just

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1 amazing. So there's a lot of information in this system.
2 So I think Garlock, which has been in the system a very
3 long time, spent a billion dollars worth of insurance
4 before we got to this point, knows quite a lot about
5 trial risk. And taken it into account when they make
6 their settlements, not just from the three factors which
7 as Dr. Peterson showed, are being modeled but for lots of
8 other reasons as well. There's all kinds of information
9 on this in the system and that's why these big databases,
10 I think, are the best base one can use to go forward.

11 Q. Dr. Bates' own model assumes that all the cases go
12 to trial anyway.

13 A. If we thought that that was true, we'd be
14 spending, what, half a million dollars a case and
15 billions of dollars just on this costs of trying those
16 cases. One of the problems in the early years of
17 Manville, Dr. Peterson mentioned we've dealt with
18 Manville in the early years twice, is they thought they
19 were going to try old cases too. Partially, they were on
20 both sides being pushed to go back into the system and
21 Judge Weinstein put a stop to that. But that's what
22 broke them.

23 Q. Dr. Rabinovitz, last one very quickly and then I
24 want to move to a chart that we hope will be helpful to
25 the Court. I don't think the Court's really heard a lot

Direct - Rabinovitz

1 about this. I believe Dr. Peterson touched upon it. Is
2 it accurate that Dr. Bates takes his database which
3 predicts the number of claims; correct?

4 A. Yes.

5 Q. And the number of claims that he predicts is
6 actually more than you; right?

7 A. Yes.

8 Q. But then he lops off one-third of all of those
9 claims, doesn't he?

10 A. Yes.

11 Q. And what is his rationale for doing that?

12 A. The rationale, as I think you've heard a little
13 bit about in the testimony so far, is that those are
14 idiopathic, meaning that that third has no known cause.
15 It doesn't mean they don't get Mesothelioma. They're out
16 there with their Mesothelioma. But you heard a little
17 bit of it in the cross of Dr. Peterson.

18 Q. So he lops off one-third of all claims that he
19 predicts under the theory that the they're idiopathic
20 now. Do you know who Mr. Glaspy is?

21 A. Yes.

22 Q. He's a western the -- was western counsel for
23 Garlock; correct?

24 A. Yes.

25 Q. And he may be in the courtroom; very accomplished

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1 lawyer. I want to play a very short clip of what
2 Mr. Glaspy had to say about the idiopathic defense.

3 (Video begins playing at 3:14 p.m.)

4 (Video stops playing at 3:14 p.m.)

5 BY MR. GUY:

6 Q. And for that we lop off 30 percent; correct?

7 A. Correct.

8 Q. Now I want to move to two slides that we hope will
9 be helpful to the Court. Your Honor, we'll hand these up
10 to you. I'm going to summarize this. I would like to do
11 it through Dr. Rabinovitz but I don't know. It's in
12 debate. This uses Dr. Bates' pending claims, and it's
13 from his data. And it uses his calculation of future
14 claims and it uses the verdict values from his data, and
15 it flows from the three step process that Mr. Inselbuch
16 questioned Dr. Bates about. And you were there for that
17 questioning, were you not, Dr. Rabinovitz?

18 A. I was.

19 Q. And you understand that Dr. Bates' model really
20 comes down to just that, doesn't it?

21 A. Yes.

22 Q. I mean, I know he has a really long report. But
23 when you break it all down, he's predicting these
24 verdicts from 24 Garlock verdicts, plus verdicts for
25 other companies. Correct?

Direct - Rabinovitz

1 A. Yes.

2 Q. And then he's multiplying them by the number of
3 claimants that he predicts, using his Nicholson model
4 with tweaks. Then he lops off a number of claims that he
5 doesn't think have merit. He unilaterally decides they
6 don't have merit, even though his own model assumes that
7 everybody who alleges exposure goes to verdict. And he
8 does the same thing to the futures, and he multiplies
9 that and he gets this really, really big number at the
10 top. Do you see that at the top of the chart, the
11 billions of dollars?

12 A. Yes.

13 Q. Then he divides it by 36, correct, which
14 represents 1/36, which he thinks is the appropriate
15 share. And then he multiplies it by 8.3 percent which he
16 believes is the right verdict rate which he uses from the
17 1990s and not the 2000s; right?

18 A. Yes.

19 Q. Now if we can go to the bottom of the eight
20 percent, 36 cross point. We may not be able to blow it
21 up, Your Honor. But that is effectively the number that
22 Dr. Bates used resulting in the \$21 million range.

23 Now if you use different assumptions, because his
24 is a model and it has assumptions. Correct?

25 A. Yes.

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1 Q. And we're going to hear from Professor Heckman in
2 a moment about economists and assumptions. If you change
3 assumptions, what does the blue represent?

4 A. The blue represents all of the different
5 variations between numbers of liable parties and verdict
6 rate, which are higher than the estimate we have put
7 forward.

8 Q. These are in hundreds of millions; right?

9 A. Yes.

10 Q. What does the red box represent?

11 A. The red box represents, I'm using one of the
12 court's documents here, the 2.43 percent -- the 2.43,
13 sorry, and the 36 percent which are Dr. Bates' preferred
14 scenario.

15 Q. So, in other words, if you used the real data and
16 apply it to Dr. Bates' model. Even if you reduce all
17 these things, and even if you pay no attention to defense
18 costs, even though he's assuming everything is going to
19 verdict, that results in a \$7 billion disease number,
20 doesn't it?

21 A. Yes.

22 Q. Now there's a second chart. If we can pull that
23 one up. Now this chart, Your Honor, just takes his
24 information and assumes that no claims should be
25 discounted. We're not unilaterally taking out any

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1 claims, because you'll remember from before that he
2 lopped off a number of claims. If you use that data,
3 which is taking his model of claims but not lopping any
4 off unilaterally, what's the number?

5 A. The number --

6 Q. Using actual history.

7 A. The number is -- call it \$13 billion.

8 Q. Garlock doesn't have \$13 billion, does it?

9 Your Honor, we present those just to show how if
10 you change the assumptions by very little, using
11 Dr. Bates' own model, which we don't embrace, and we
12 recognize that the claims -- he uses the lower claims.
13 But either one, you have numbers that are much higher
14 than our estimate.

15 Now you said at the beginning that your opinions
16 are the product of reliable principles and methods and
17 that you reliably applied those principles and methods to
18 this case. I just want to pull up your opinion. What
19 are your opinions, so that we have them on the record?

20 A. That the NPV liability which the Court has
21 requested is 1. -- a billion 292 in the base case and a
22 billion 271 in the adjusted case.

23 Q. And I want you to tell Judge Hodges why he can
24 feel comfortable that you have, as we've asked you to,
25 reliably applied those principles and methods to this

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1 case and throughout to arrive at that number.

2 A. We try as best we can to use as much of the
3 available data as possible to be open and easy to follow,
4 transparent, if you will, about the methods that we are
5 using to take into account all of our information
6 day-to-day and year-to-year about how this whole market
7 is behaving. We get tested on our forecast methodology
8 every quarter and particularly every year by companies
9 who are reporting these estimates as their contingent
10 liability. We get tested in bankruptcy proceedings.

11 We look at these calculations from a number of
12 different perspectives all the time. So we have
13 confidence that -- and our clients have confidence that
14 within the bounds of this very complicated problem our
15 estimates will be reliable and that they've taken into
16 account what we know about current conditions.

17 Q. You didn't try to reach a low number, did you?

18 A. No, sir.

19 Q. You didn't try to reach a high number, did you?

20 A. No.

21 Q. You just used the data that was available to you;
22 correct?

23 A. Yes.

24 Q. And you used the Nicholson model?

25 A. Nicholson-KPMG. Yes.

Direct - Rabinovitz

1 Q. Which is a highly reliable and highly respected
2 model; correct?

3 A. Yes.

4 Q. And you used the debtor's own data about their
5 defense costs; correct?

6 A. We did.

7 Q. Your Honor, I have no further questions. I think
8 I just came in time. And I would like to move in the
9 exhibits, but perhaps we can do that at a later date so
10 we can get Professor Heckman on.

11 THE COURT: Thank you. And congratulations. You
12 came in on time and under budget. In fact, it occurred
13 to me the way to settle this case was just reduce the
14 attorneys' fees to \$50 an hour and we'd be done by 4
15 o'clock this afternoon probably.

16 MR. GUY: I didn't even ask Dr. Rabinovitz how
17 little she spent compared to all the others.

18 THE COURT: Thank you. Let's take a break until
19 3:30.

20 (Off the record at 3:23 p.m.)

21 (On the record at 3:34 p.m.)

22 THE COURT: Have a seat.

23 (Witness duly sworn at 3:34 p.m.)

24

25

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1 MR. NEBRIG: Your Honor, Mark Nebrig for Coltec
2 Industries. We call Dr. James Heckman to the stand.

3 THE COURT: Okay.

4 **DIRECT EXAMINATION**

5 BY MR. NEBRIG:

6 Q. Good afternoon, Dr. Heckman.

7 A. Good afternoon.

8 Q. Could you introduce yourself to the Court, please?

9 A. My name is James Heckman.

10 Q. And Dr. Heckman, what positions do you currently
11 hold?

12 A. Several. But for brevity, the Department of
13 Economics, University of Chicago; and the Harris School
14 of Public Policy. Also, I'm a senior scholar at the
15 American Bar Foundation in Chicago.

16 Q. Dr. Heckman, could you briefly just tell the
17 court what opinions you've been asked to give today?

18 A. Well I've been asked to assess the forecasting
19 approaches that have been by Dr. Peterson and
20 Dr. Rabinovitz.

21 Q. And what, specifically, about those approaches
22 have you been asked to assess?

23 A. I've been asked to consider their reliability and
24 their -- whether or not they apply what are valid
25 scientific methods, or valid statistical procedures, for

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1 analyzing the past, projecting the future claiming
2 behavior as used in a wide variety of fields, in
3 economics and in more general fields as well.

4 Q. Now let's discuss your background and experience
5 briefly. We won't go through every one of these items.

6 A. Yes.

7 Q. Could you just discuss about your education, your
8 professional background; some highlights that may be
9 applicable today, starting with your education?

10 A. I have a B.A. degree from the aforementioned
11 college; a Ph.D from Princeton. And I've been a
12 professor of Economics at the University of Chicago since
13 1973 and have held some other appointments as well, with
14 the appointment at the University of Chicago, including a
15 brief visit at Yale University.

16 Q. Are any of your recent academic appointments
17 particularly applicable to what you're here to discuss
18 today with the Court?

19 A. I'm at the Harris School of Public Policy which
20 does do public policy evaluation. I teach every year a
21 course on public policy evaluation. And I also am
22 working on research on law and economics at the American
23 Bar of Foundation and have been for the last 22 years.

24 Q. What's the American bar foundation?

25 A. The American Bar Foundation is a foundation

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1 associated with the American Bar Association but with
2 independent status and independent funding that
3 investigates the empirical foundations of law. It's not
4 just law and economics. It's law, empirical law, across
5 a variety of different sciences and approaches to
6 empirical legal studies.

7 Q. And looking at that as some academic, both in what
8 you do day-to-day and some of your academic appointments.
9 Have you also done some work with organizations that are,
10 let's just say, out in the real world away from academia?

11 A. Well that's a great source of information for me,
12 and I use -- I work actively with groups like the China
13 Development Research Foundation, which is a major advisor
14 for economic policy in China, the OMB, the Department of
15 Education, the Department of Labor, as well as various
16 international agencies. I'm also now actively consulting
17 with two different agencies cabinet agencies in Britain,
18 United Kingdom.

19 Q. Now do these -- your work with these organizations
20 and foundations, do they have, let's just say, real world
21 applications?

22 A. Oh, yes. My work is all empirically motivated.
23 And I find it a major source of not only intellectual
24 stimulation, a source of guidance. There's always a
25 danger of getting too carried away too far from the data.

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1 I work with the data. We visit sites. We work with
2 individuals. For example, recently, in Beijing, with the
3 China Development Research Foundation, we talked with the
4 mayors of a program implementing a program designed to
5 improve the status of very poor rural Chinese children.
6 And we talked directly with a program administrators and
7 the local officials administering the program.

8 Q. Dr. Heckman, what about your education, your
9 professional background that you've just described,
10 provides you with the ability to reach the opinions that
11 you will render today?

12 A. Well I've considered a range of questions about
13 forecasting what the effects are of policy and a number
14 of outcomes. For example, looking at the effect of
15 changes in tax rates, for example, on the consumption of
16 cigarettes; the effect of increases in the minimum wage;
17 the effect of civil rights and affirmative action on
18 employment and integration of blacks into the work force.
19 I've also done a great deal of work on the effective of
20 early childhood programs. The effect, then, is to
21 predict what happened in the short run and then to
22 look at the long run consequences of these outcomes for
23 social and economic policies that arise and well informed
24 empirical judgments can be made.

25 Q. Have you received any awards or recognitions that

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1 relate directly to the topics that you've been asked to
2 consider as an expert here?

3 A. Well, I guess, probably the most salient product I
4 received, the one that's best known is the Nobel prize in
5 Economics. And I believe in the citation statement it
6 mentions specifically my work on providing a scientific
7 basis for public policy evaluation. Not only that was
8 empirically grounded, but that it had influence in a
9 number of areas of social and economic policy.

10 Q. I see -- we'll talk a little bit about the Nobel
11 in a second. But I see in some of your fellowships some
12 having to do with statistics.

13 A. Yes. I'm a fellow of the American Statistical
14 Association, also a fellow of the American Association
15 for the Advancement of Science, and I work closely with
16 groups at the national academy. I'm a member of the
17 National Academy of Sciences and have been for about 20
18 years now. And I've actively consulted with them in the
19 sense of working on a project on statistical evidence as
20 assessments in the courts.

21 Q. You said statistical evidence as examined by
22 courts?

23 A. No. As assessments in the court. So the whole
24 question is trying to understand how to integrate the
25 modern body of statistical knowledge into the legal

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1 proceedings across a wide variety of areas of law. It
2 was a book that was published some 20 years ago, but it's
3 been updated. The editor is Steven Feinberg.

4 Q. You mentioned a second about your Nobel and what,
5 particularly or specifically, you were recognized for in
6 that. I just want to read a little bit of the quotes
7 from -- in the presentation of that award to you. It
8 says, "This year's Laureates in economic sciences have
9 developed methods for solving fundamental problems
10 arising in the analysis of microdata. Their
11 methods have become standard tools of
12 microeconomic research and economics, as well as
13 in other social sciences and have been applied to
14 solving many important problems in society.
15 Heckman has made significant empirical studies in
16 all these areas. The methods you developed,
17 together with new data sets and powerful computers
18 made it possible to study individual economic
19 behavior in a statistically correct way. In your
20 own applied research you demonstrated how solid
21 empirical knowledge can help address important
22 social problems."

23 Is that what your work was when you received the
24 Prize and what you've done since salient to what you're
25 talking about today with regard to Drs. Peterson and

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1 Rabinovitz's work?

2 A. It's what I teach at the Harris school of public
3 policy and also at the University of Chicago Department
4 of Economics. It's using economics and drawing on a body
5 of knowledge and empirical knowledge to make wise public
6 policy discussions. And I think it has made a difference
7 in terms of the current discussions of early childhood
8 policy. The Obama Administration has been put forward to
9 congress proposals understanding reform and education,
10 and reform in civil rights in a number of areas of social
11 policy.

12 Q. How about for economic forecasting as we've at
13 least seen here from some of the experts in this case?

14 A. Yes. No. I've worked extensively in the area of
15 economic forecasting but in a variety of areas. For
16 example, I mentioned briefly the effect of a change in
17 the price of cigarettes on the demand for cigarettes,
18 something which is extremely important in terms of
19 current public policy and was actually a source of
20 discussion as recently as this February, and a number of
21 other cases looking at the effect of changing tuition
22 policies on changing the access to education for
23 Americans and what the consequences would be, not only in
24 the short run but in the long run. Not just looking at
25 the effect on the current generation but in future

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1 generations and over the life cycle of the individuals
2 involved who would be enrolled in college under certain
3 policies.

4 Q. Now, you are an econometrician; is that right?

5 A. I'm an econometrician and an empirical economist,
6 and I do labor economics as well. And I do work in law
7 and economics. I have a variety of portfolios. I would
8 say I do methodology. I do a lot of methodology,
9 straightforward methodology, mathematical studies, and I
10 was recognized for that as well. But I also do a lot of
11 empirical work to make the empirical work relevant and
12 address the questions that arise in doing a sound
13 empirical analysis.

14 Q. Do the tools used by econometricians to develop a
15 forecast, are they useful in this case?

16 A. They are, but I would say they have general
17 applicability. They have applicability in a wide variety
18 of areas. And some of these are foundational statistical
19 tools that have been out in the public domain, not just
20 in economics but in sociology and psychology and
21 education. For that matter, in many other fields, even
22 in science, for example, in drug trials and policies made
23 by the Food and Drug Administration.

24 So we're talking about a basic core set of
25 principles in statistical inference that I've drawn on,

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1 used and you adapt to various areas as needed and
2 problems. But the crucial thing is there's a unifying
3 set of principles across areas. It's not like there's a
4 statistics for asbestos and statistics for chemistry, a
5 statistics for cancer or something of the sort. There
6 are general principles of statistical inference and
7 procedures that are used -- that are accepted principles
8 by scholars who are competent in these fields. And I
9 think these are the principles that I've adopted and then
10 adapted when they're needed for specific instances.

11 Q. Sir, have you reached your opinion today with a
12 reasonable degree of certainty, applying such concepts
13 scientifically, and in the field of econometrics?

14 A. What I've applied is a standard that I think would
15 be uniform across social science and, frankly, across
16 science. Yes, a uniform standard. Correct.

17 Q. Your Honor, we tender Dr. Heckman as an expert in
18 the field of economics, econometrics, economic
19 forecasting, and forecasting based on future behaviors
20 and changing incentives.

21 THE COURT: All right.

22 MR. WEHNER: We'll reserve our objection.

23 THE COURT: Okay. We'll accept him as such.

24 BY MR. NEBRIG:

25 Q. Dr. Heckman, we'll get to some of the

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1 nitty-gritty in a couple of minutes. Provide the Court
2 with your general opinions regarding Dr. Peterson's and
3 Dr. Ravinowitz's methods for estimating Garlock's
4 liability for present and future Mesothelioma claims.

5 A. Well, again, from the vantage point that I was
6 announcing earlier, namely the uniform methodology used
7 in a number of areas to establish, estimate and value and
8 forecast various items, not just claims in asbestos. I
9 do not believe either Dr. Peterson or Dr. Rabinovitz used
10 what I would consider reliable and established
11 methodologies that are useful across these different
12 areas of knowledge. And I would also, in particular,
13 they don't use the well-established econometric framework
14 that's as powerful in forecasting and has been developed
15 since the 1930s.

16 In fact, the first two Laureates in Economics
17 rewarded in 1969 were rewarded their prizes for their
18 work on predicting the effects of economic policies on
19 society and making long run forecasts. And so I would
20 say they do not use that methodology and the way it's
21 been adapted since the 1930s.

22 They also do not employ what I would consider the
23 scientific method, this rigorous method that's developed
24 across a number and report and test their and subject
25 their analyses to the kind of scrutiny that is standard,

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1 I think, in many areas of science that I know is
2 important in science. So I think --

3 Q. I'm sorry. To what degree do either Dr. Peterson
4 or Dr. Rabinovitz follow the rules of statistics and
5 statistical forecasting in their methods?

6 A. Very little. They have a private knowledge. I
7 was somewhat surprised to read some of their statements
8 and hear some of the statements about what "best
9 practice" is in this area. I do not believe it would be
10 accepted. And you could put many other people in this
11 witness stand and they would also, I think, share the
12 same notion that, in fact, in terms of the standards that
13 are used in evidence, the same standards that are used to
14 judge whether or not people get a drug is accepted or
15 approved by the FDA, and whether or not certain programs
16 are evaluated for funding and for approval by U.S.
17 Department of Education and across the board. They would
18 not in any sense -- I shouldn't say in any sense. But
19 they would not satisfy the criteria with the accepted in
20 terms of reporting on sensitivity, on variability, and
21 reliability of their estimates.

22 Q. Are either of their forecasts or methods well
23 reasoned?

24 A. To my knowledge and in terms of this body of
25 literature I'm referring to, no.

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1 Q. What degree of confidence do you have that
2 Drs. Peterson or Rabinovitz's forecasting methods
3 provide a reliable estimate for Garlock's pending and
4 future Mesothelioma claims?

5 A. Well in my report to the Court, my report in this
6 case, I did some sensitivity analysis and reported some
7 variability, reported something which they don't report
8 called confidence intervals, measures of variability and
9 some sensitivity analyses. I would simply say that right
10 now, based on what I've seen, and based on what I think
11 are conventional standards in literature and a vast
12 literature, they have not actually presented reports that
13 would meet those standards, standards that are uniform in
14 many areas of science and knowledge.

15 Q. Now we've heard the last couple days from
16 Drs. Peterson and Rabinovitz and read in their reports
17 about a calibration period in order to then base their
18 forecast on. Can you tell the Court, why is it important
19 to select calibration periods that are based on sound
20 methods and arguments?

21 A. I think it's important to understand and frame
22 very clearly what the purpose of the forecast is, what
23 the intent is, and what the environment is envisioned to
24 be for which the forecast is applicable. That was
25 missing. There was no statement about what would be

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1 sound -- sorry. What would be the standard -- what would
2 be the likely scenarios. Typically, in making
3 forecasting, one essentially adopts a variety of
4 different scenarios. One considers different kinds of
5 elements of plausibility and bases that, not just on idle
6 speculation but on current developments in particular
7 fields, in particular areas; changes that are under way,
8 changes that are discussed, changes that might be
9 plausible. And so in that sense, I saw very little
10 discussion of that by either.

11 Q. What's your opinion about the periods that they
12 selected?

13 A. Well, they are the most recent. And I heard to my
14 surprise that there's somehow a principal established
15 that you use the most recent period to establish what
16 should be happening in the rest of the next ten, 20, 30
17 years. That simply isn't true. We've seen the failure
18 of that in evaluating stock prices. There's something
19 called "staying with a winner." We know that's a
20 strategy that's actually failed miserably.

21 In the recent housing crisis, we had this notion
22 of saying housing prices would go up for the last 50
23 years and, therefore, they would go up for the next 50
24 years. And we also saw that that was, in fact, a very
25 poor idea. And in fact, it actually led to serious

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1 misconceptions of policy, not just economic policy but
2 also in terms of financial policy. And so in some sense
3 we have to ask, what do we know and what do we think we
4 know? And under what sensitivity could we do it by how
5 the environment would evolve to which the forecast is
6 made? That's the key point. The key point is, what is
7 the question they're answering? And I saw very little
8 discussion of that. You need to think of the
9 environments to which the forecasts are applied and what
10 the question is that really answers it and how they are
11 adapting it to what the different environments might be.

12 Q. And if you do not provide a sound method or an
13 argument for your selection of a calibration period, what
14 does that tell you about the reliability of that period
15 that's selected?

16 A. Well it would tell me that I would be very
17 uncertain about that. I wouldn't say whatever happened
18 yesterday is not necessarily going to happen tomorrow.
19 That is just a bad rule. Sometimes it would work. There
20 are situations where that can work. If you have, like,
21 primitive agriculture living in an area where there's,
22 you know, the environment doesn't change much, the level
23 of technology of the way the crops are grown doesn't
24 change much, the level of knowledge of the people making
25 the crops hasn't changed much, then probably the practice

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1 done 50 years ago, maybe even a thousand years ago, is
2 relevant to what will happen next period and maybe a
3 thousand years in the future.

4 But if we live in an environment where there's
5 change and where there's a lot of discussion of change,
6 it's going to be very difficult to say to those
7 forecasts, based on the past, apply mechanically directly
8 to the future. It just wasn't a principled argument that
9 I saw made about why the most recent period was
10 necessarily the best.

11 Q. What's your understanding about the level of
12 change in asbestos litigation in the past and present and
13 maybe in the future?

14 MR. GUY: Objection, Your Honor. This witness is
15 not a lawyer, nor is he an expert in asbestos litigation.
16 He's an economist. It's beyond the scope of his
17 expertise.

18 THE COURT: We'll let him testify. Go ahead.

19 THE WITNESS: I work in law and economics, and
20 there's a substantial body of work by Shelley White in
21 the Economic Journal Perspectives. A number of work --
22 people at the American Bar Foundation and working at the
23 American Bar Foundation looking at what is called this
24 massive elephantine problem; a Supreme Court judge talked
25 about this. A lot of economists have worked on this. A

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1 lot of economists have said the RAND report, the Civil
2 Institute [sic] report has discussed this. There are
3 ongoing discussions that are made. This is not just
4 something that is only applicable in the law. The law
5 and economics and public policy communities worried
6 greatly about the growth in asbestos legislation and the
7 various proposals and changes that have been made to
8 public policy to try to improve what seems to many to be
9 a failed system.

10 BY MR. NEBRIG:

11 Q. And does that type of flux in the system, what
12 does that mean for a method that selects simply the
13 recent past and extrapolates that into the future?

14 A. Well I would say it would be that you should let
15 -- you should beware. You should be cautious. You
16 should be highly cautious, especially when there isn't
17 any sense of the precision with which that future period
18 -- the future forecast necessarily is well described by
19 the events that have occurred in the last five years, the
20 last three years, the last six years.

21 So I think one has to recognize what the policy
22 discussion is. This goes back to my question, we want to
23 understand what is the question we're trying to address?
24 What are the different environments? What are the
25 different policy proposals out there? Like, for example,

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1 I know, for example, the RAND system and also in Shelley
2 White's article that I referred to a minute ago that
3 there's a lot of discussion about trying to make things
4 more transparent and trying to improve transparency in
5 the system. And I know there are movements afoot right
6 now. And I see this discussion in the law and economics
7 community where there's a lot of discussion exactly about
8 the structure of proposals to improve transparency, to
9 improve discovery and various statements.

10 The RAND justice report in 2005 discusses fully
11 some aspects where discovery can be improved. Discovery
12 -- I'm not using -- I'm not a lawyer. It's correct that
13 I'm not a lawyer. What I mean is finding of facts about
14 individuals cross-listing claims; procedures that might
15 minimize that kind of procedure that's been documented in
16 certain areas of the law so that these are proposals that
17 are on the table. And I know that there's a lot of
18 discussion in tort reform has occurred and, again, the
19 law on economics community discusses this.

20 Q. But you'll agree this is a tough problem.

21 A. It is a very tough problem.

22 Q. And when you have this kind of a difficult problem
23 and a difficult history, why isn't it the right thing to
24 simply say, hey, the recent past temporal propinquity,
25 that's the best we got and so that's what we need to use

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1 to forecast the future?

2 A. Well, I mean, you could apply that like I
3 mentioned a minute ago to the housing crisis and say,
4 okay. That means the price of housing in San Diego this
5 year is a lot higher than it was last year and a lot
6 higher than it was ten years ago and by amount that would
7 be way off in terms of the mark. The same thing would be
8 true about saying, here's the price of Goodyear -- say
9 some Goodyear stock or any other security. Naive rules
10 of this sort may work. I give conditions under which
11 they work.

12 I mean there could be a sense in which the
13 environment is really stationary. It's like my primitive
14 agriculture example where the world hasn't changed in
15 past, it's unlikely to change in the future, but what
16 happened in past is a good guide for the future. But the
17 question is, is that a reasonable description? There I
18 would defer to the law, the judge, the courts as to
19 whether it's a reasonable description that would take us
20 back in this litigation in this discussion in the court.

21 Q. Now digging into the actual equations that
22 Dr. Peterson and Dr. Rabinovitz employed in their
23 formula, let's just call it. And you'll agree they're
24 relatively similar, the two methods and the two formulas
25 that they use; correct?

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1 A. Not identical, but similar. Similar in spirit and
2 similar in what I would argue to be essential analytical
3 details.

4 Q. And they -- again, essentially, they multiply and
5 look at the number of claims, they look at Garlock's
6 payment rate, and the recent average settlement value to
7 predict the value of Garlock's pending and future claims.
8 Is that your understanding, at least from a formula
9 standpoint, of the method of Drs. Peterson and
10 Rabinovitz?

11 A. They give formulas and we've seen displays of
12 those formulas here on the screen in several different
13 reports to this court where I've been present. So yes,
14 that's their procedure.

15 Q. And when you look at those formulas and the
16 descriptions that you heard in court the last couple of
17 days of those formulas and what goes into those numbers,
18 what role -- what is the role of individual and firm
19 choice in those types of forecasting models that you saw
20 from Drs. Peterson and Rabinovitz?

21 A. There's an implicit assumption when you come to
22 the forecast that whatever firms are doing today is what
23 they'll do tomorrow and the next 30 or 40 years. That
24 whatever the courts are doing will be the same for the
25 next 30, 40, 50 years. And so there's an assumption that

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1 whatever happened in the past will happen again in the
2 future. It's a trend line extraction. It's a simplified
3 form of regression. It's a version of a regression that
4 makes the assumption that any of these other conditions,
5 any of the other factors that have been discussed in the
6 law and economics literature, factors that would
7 influence the settlement and the various other features
8 of a particular act of litigation, that those are not
9 relevant or those won't change over the -- in the future.

10 Q. Is that scientific?

11 A. Well, if you argued and gave a principled argument
12 why that's true then, yes, it would be. If you could
13 establish a strong basis for that argument, yes, there's
14 nothing wrong. As I say in my New Guinea -- sorry, I
15 didn't mention the word New Guinea before, but I had in
16 mind this primitive agriculture of New Guinea. And you
17 can say well, I'm willing to say cultivation in the
18 hillsides of New Guinea provides a pretty stable estimate
19 of what essential future activity will be, because I know
20 that the agriculture that they've used, and these are
21 Stone Age people still, some of them, that those Stone
22 Age practices will be used again in the future, and then
23 I think it's a safe prediction. But the question is,
24 again, how far, how stable will that be? My guess is
25 even in New Guinea they're going to find people getting

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1 more education, that there are going to practices about
2 improving agriculture and, therefore, the assumption
3 about what happened in the past will happen in the future
4 is a bad one.

5 Q. You talk about someone providing a sound argument
6 for why they selected the calibration period or for why
7 they even put a particular formula out to predict future
8 forecasting, again, understanding the calibration period
9 selection. But for the formula selection, is it
10 important to put out a sound, valid argument for why you
11 put that type of formula together to make a forecasting
12 model?

13 A. I have to clarify what you mean exactly by the
14 formula. I mean this product --

15 Q. The formula that Drs. Peterson and Rabinovitz
16 used.

17 A. You mean the product of these things.

18 Q. Absolutely.

19 A. I think one of the things you would ask would be,
20 these products aren't independent of each other. If you
21 change one, the others may well change. And in fact,
22 there is some evidence in the law and economics
23 literature that I they do change.

24 Q. So if you have multiple factors and two of them
25 are all off a little bit, that magnifies how much the

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1 entire formula is off; is that the entire concept?

2 A. Now you're getting into an issue about the
3 statistical reliability. There's a sense in which if you
4 have small errors because your product these errors that
5 you can actually lead to some very substantial error in
6 the estimate. But there's a more basic point before one
7 gets to that point and that is, there is no measure of
8 variability, nothing what's called a confidence interval;
9 a measure of uncertainty of the forecast. That's a
10 standard rule. When we adopt a certain kind of aspirin
11 and we pull a drug from the market, we ask that there is
12 certain confidence intervals be given on the drug trial
13 or on some kind of FDA hearing or an educational
14 intervention or a number of other interventions.

15 This is standard statistics. This is not
16 something I invented. It's not something unique to
17 asbestos. It's something uniform you would ask. And
18 when you encounter things, additional things like
19 measurement error. Because this formula is product, it
20 gives the possibility they multiply up. It propagates.

21 Q. You mentioned the confidence intervals in that
22 type of testing for reliability. Did you see any of that
23 in Drs. Peterson's or Rabinovitz's reports or their
24 testimony today?

25 A. No. No. None. None whatsoever. It staggered

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1 me. But I mean, again, I'm looking from the vantage
2 point of saying if you look at this from the standards --
3 and this was something we just addressed in this report
4 from the National Research Council some 30 years ago, the
5 Feinberg report, statistical evidence of assessment in
6 the courts that -- again, a very important issue in that
7 book and in the whole discussion in the law on economics
8 and in just the law on statistics literature has been,
9 how do you come up with valid measures of variability on
10 your estimates, accounting for uncertainty and accounting
11 for things like measurement error and accounting for
12 things. So it's sensitivity analyses, and I saw none of
13 that.

14 Q. But I understand that from a statistical
15 standpoint and from an econometrics standpoint
16 potentially. But for the judge who's trying to determine
17 a number, why is that type of testing and reliability
18 important, or the lack thereof?

19 A. Again, this is certainly not something I invented.
20 This goes back to the 1920s and 1930s and R.A. Fisher; it
21 goes back to Neiman and so forth. When you come up
22 with an estimate, these are statistics and they have all
23 kinds of problems. And the problems are associated with
24 variability. We draw samples and we want to come up with
25 measures of precision, some measures of confidence

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1 estimate, some measures of precision in how much
2 variability. So, is it really big or is it really small?
3 Can we really say if we go to the lowest level or the
4 highest level? It's just a number. It's a range of
5 numbers. It's that range of numbers which I think is a
6 part of the whole business of creating a reliable
7 forecast; a range of models for a different plausible
8 scenarios and different possible critics to the right
9 hand by using a physical kind of theory.

10 I saw very little testing, very little use of the
11 modern theory of statistical inference which say is not
12 just economics. It's not law and economics. This is
13 something that is universal across statistics and across
14 all applications of statistics. I may in science, social
15 science and in some area of law and economics, like
16 discrimination law.

17 I mean the famous -- this report that we looked at
18 at the National Research Counsel did a lot of study in
19 the -- the particulars of the case law on discrimination
20 and use of regression models and measures of precision
21 for arriving at discrimination. And one of the beginning
22 rules was producing variability and showing how your
23 estimates vary. And how they would vary as you try
24 different kinds of explanatory variables is you try
25 different kinds of scenarios. So in that sense, I'm just

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1 referring to what I consider a canonical principle of
2 science and knowledge -- modern science.

3 Q. How do you view forecasting models that do not use
4 tools such as confidence intervals at all?

5 A. I would say they're unreliable. I just say -- you
6 know, I can't say. I'm not God and I can't say that I
7 know exactly what will happen in 2020. But I would say
8 it would be nice to know some idea of how much precision
9 is associated with the estimates associated with 2020,
10 2019 or any of the other estimates, or any of these
11 estimates.

12 Q. Understanding that Drs. Peterson and Rabinovitz
13 did not at least report any type of confidence interval,
14 did you yourself try to test -- provide this new one test
15 to the accuracy of Drs. Peterson's or Rabinovitz's
16 model?

17 A. Yes, I did. I look at prognostication. As the slide
18 here shows, confidence intervals are commonly used. It's
19 commonly used in the law and law and economics, and it's
20 been used in discrimination, which I know best. Errors
21 in variable forecasts we've talked about before. And so
22 what I'm suggesting is I have applied some very
23 rudimentary tests just to see what the sensitivity
24 analysis would be to the numbers that I saw on
25 Dr. Peterson's report.

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1 Q. And let's look at that real quick and see.

2 A. Okay.

3 Q. Again, this is a chart or table that you prepared
4 and you put in your rebuttal report?

5 A. Yes.

6 Q. Some of the numbers here or there. It may not be
7 a direct pull from your report. But as best you can,
8 without confusing me.

9 A. It is in the report.

10 Q. Okay. Good. Could you describe what we're
11 looking at here? And then if you can, tell us why it's
12 important as you go through it.

13 A. Well what we're looking at is estimates that are
14 reported in the -- by Dr. Peterson. And what I do is
15 associate with them, using, again, rudimentary tools. I
16 don't want to endorse this model and say it's a correct
17 model. I think there are issues about what should be
18 predictors in the model. Whether or not you want to just
19 look at means, or whether or not you want to look at more
20 sophisticated regression-type models that would account
21 for variability and the age and venues and aspects of
22 whether or not the person's alive or dead in terms of
23 what the liability estimate would be. But putting aside
24 all of those issues, what is the measure of variability?
25 This is just using the standard confidence interval, some

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1 standard notion, and this is a standard deviation. So
2 the confidence intervals would be 20 percent. If you
3 just look at the propensity to pay, it would be 20
4 percent on the downside and then 20 percent on the up
5 side. That's the range of variability that's suggested
6 by Dr. Peterson's data. And you can see the other limits
7 of variability. You just multiply those by a factor of
8 two on each side and you get some idea of what the
9 variability would be upper bound and lower bound,
10 assuming the model is correct. This is not subjecting
11 the underlying model is correct. This is not subjecting
12 the underlying model to the test. It's simply saying,
13 given the model is correct, this is the intrinsic
14 variability in the data. The data are not speaking with
15 a single voice. Everything is a sample. That's the
16 modern theory of statistics. That's what R.A. Fisher
17 basically taught us. That's what modern statistics has
18 taught us in the last hundred years. And I think we need
19 to account for our knowledge, our qualifier knowledge, by
20 this degree of uncertainty, allowing for the uncertainty
21 and to quantify it.

22 Q. Understanding the formula that is used, that these
23 particular inputs are used to generate a liability
24 forecast. Understanding that that formula is a product
25 of some of these inputs, how does the -- is there a

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1 multiplier effect, or is there an enhancement to the
2 invariability or the lack of reliability in the equation
3 that Dr. Peterson used, based on these?

4 A. I have not given here a confidence interval for
5 the final estimate, the whole product of these things.
6 The reason is that these variables may be related to each
7 other. And because of that, the uncertainty of the whole
8 product of these would be a product of -- you would have
9 to account for the dependence in those. And that could
10 either be positive or negative, but it would lead to some
11 fundamental source of uncertainty that I didn't see
12 accounted for. That's kind of one point.

13 Secondly, it doesn't account for the fact that
14 when you multiply variables that are measured with error,
15 all of these are -- we can't -- one of the basic findings
16 that any statistical analysis finds when we do validity
17 studies in the sense of going back and looking at what's
18 reported in this study, going back and reporting in
19 what's in that study, re-sampling of the population, we
20 find that there's measurement error. And the measurement
21 error has a particular property here when you multiply it
22 out. It's always going to be a number that's positive,
23 and these things could multiply to something that's quite
24 substantial. It's just not done. I can't speak with
25 authority as to what the exact adjustment should be.

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1 What I'm saying is that adjustment was never discussed,
2 much less made.

3 Q. How would economists or econometricians in your
4 field view Drs. Peterson's or Rabinovitz's forecasting
5 methods, in light of the wide variance that's shown by
6 your table here?

7 A. Well, I mean, anybody making a decision on this,
8 and there's a whole discussion in the statistics
9 literature and in the econometrics literature and in the
10 statistical decision literature of saying how can we --
11 how should we account and report for this kind of
12 uncertainty. But I would say even before we looked at
13 these particular numbers, we would want to be able to
14 have that last column in our table. We'd say we want the
15 beginning and we'd like to know how it correlated, how
16 dependent these objects are. So it's like we haven't
17 even started the discussion, so I hate to make an
18 inclusion about what that discussion would end up
19 summarizing. But I would say the discussion hasn't been
20 started, so I don't know what the final conclusion would
21 be.

22 I think it's an important part of really
23 understanding what the true variability is, what the true
24 uncertainty is and what the true reliability is, and
25 that's different. Yet, from another notion which is

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1 closely related but is conceptually different, and that
2 is the notion of how sensitive the model is if I try
3 different sub-periods of the data; I try more than just
4 two. I try lots of different sub-periods. I do what's
5 called "within sample forecasting." Even though we can't
6 predict the future, we certainly can apply our rules in
7 the past and say, how well would this rule have done if
8 we applied it 20 years ago? Ten years ago? And I didn't
9 see even that kind of discussion. That's the kind of
10 internal model sensitivity discussion.

11 I saw one sensitivity study in Dr. Peterson's
12 report where he changes, I think, from 2003 -- sorry,
13 2006 to 2010 -- 2003. And I did some similar -- I did
14 some sensitivity. I mentioned there in my report that if
15 you change from 2010 to 2009 -- and my reading what he
16 was saying earlier today was 2010 might not be a reliable
17 benchmark anyway for the reasons he gave, that you get a
18 very different estimate, for example, on settlements.

19 So it's that kind of precision, just testing the
20 numbers; kicking the tires. That's what a good
21 statistical assessment does. You don't just report a
22 number and say I've been doing this or somebody told me
23 to do it. I think you say, look. There's a body of
24 knowledge out there. I'm following that knowledge and
25 I'm doing it by the rules that I didn't make up today or

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1 that some person made up in some venue. But here is what
2 every undergraduate major, say, at UNC who took any
3 course in statistics would be asked to do in terms of
4 reliability of a statistical forecast and estimate.

5 Q. In your opinion, what motivation would someone
6 have to not provide this type of report of information on
7 variability?

8 A. Well, that's -- you're asking me to be -- I mean,
9 there's an obvious motivation which I think I needn't
10 even say. I don't want to insult the intelligence of the
11 Court. But the other one may simply be the inability to
12 do this. I don't know. I simply don't know. It wasn't
13 done. I can't say for sure. I certainly don't -- do not
14 know the psychological motives, and I don't want to
15 speculate as to the motives of why these -- they weren't
16 reported.

17 I'm just saying that by the standards that I see
18 and the journals that I edit and the work that I teach
19 and the work that hundreds, thousands of people, not just
20 econometricians, statisticians, empirical scholars, long
21 stripes in many fields. We didn't see this last column.
22 That's what every paper shows. Some people complain
23 about it. This is kind of -- looking at the reports was
24 kind of interesting to me because there's a whole
25 discussion.

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1 Each one of these points you can talk about and
2 say oh, there's a better way to do this; there's a better
3 way to do it. But nobody says you shouldn't report some
4 measure of variability of your estimate. It's just some
5 description about how do you actually arrive at the
6 measure of variability? It's like we haven't even
7 started walking before we actually, you know, so we can't
8 say how we run. What would happen if we actually did it
9 in a competent way?

10 Q. Now we've talked about calibration period
11 selection, the input selection, and then the variability
12 in Drs. Peterson's and Rabinovitz's forecasting. You
13 personally have never forecast pending or future asbestos
14 claims, have you, sir?

15 A. Only to the extent that I did these calculations
16 here you see in Table 1, Sensitivity Studies. But I have
17 not done a systematic study of the underlying data. I
18 haven't looked at the individual records and done so.
19 No.

20 Q. If you have never done a forecast, then how can
21 you criticize what Drs. Peterson and Rabinovitz have
22 done in this case?

23 A. Well, that's what I saying before. There's not a
24 new statistic for asbestos. There is not a new statistic
25 for a particular disease. There's a standard rule for

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1 statistics. I've certainly done this in areas where I've
2 looked at what the effects are on tuition policies and
3 lifetime education and the inequality of earnings and the
4 inequality of opportunity problems. I've certainly done
5 forecasts like this in areas where I've looked at the
6 Office of Federal Contract Compliance and whether or not
7 they award contracts or change the strategy by which they
8 award contracts on the integration of African-Americans
9 into mainstream industries in the United States. Those
10 are long-term forecasts, and those are forecasts where I
11 validated using the criteria.

12 Again, I'd say if you hold my feet to the fire and
13 you adopt a criterion that says that for every disease,
14 that for every single type of issue there's only --
15 there's a new statistic that emerges then, no, I haven't
16 applied them because I don't know what the statistics is
17 in asbestos, at least as to these witnesses or these
18 authorities are reporting. But I can say that I believe,
19 and I think you could find many people to just take my
20 place. I am exchangeable. There are hundreds, thousands
21 of people who would come up and make similar objections
22 to the nature of these estimates. So I'm not -- I'm not
23 atypical in that regard. It's -- that, I think, would
24 strengthen. My guess is you can get a Statistics major
25 from UNC to come down and testify exactly to the question

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1 of, how come they can come up with an estimate without
2 reporting estimates of sample variability?

3 Q. It's been reported that Drs. Peterson's and
4 Rabinovitz's methods of reporting have been accepted by
5 some courts. Would Drs. Peterson's or Rabinovitz's
6 forecasts be accepted by the economic community that
7 you're a part of?

8 A. No. But let me go back for a minute to the study
9 that I mentioned by the National Resource Counsel and
10 supported by the National Academy of Sciences. We were
11 looking at exactly the way that statistical evidence was
12 used in discrimination cases. These were employment
13 discrimination cases. And when we were looking into
14 that, this was 19- in the early -- in the mid-1980s.
15 There was a very important case that we looked at,
16 Vianovich versus Republic National Bank where, literally,
17 what happened was there had been a standard in
18 establishing discrimination cases.

19 And the witnesses that appeared before this judge,
20 I've forgotten his name, I believe it was in a court in
21 Texas. Republic National Bank was in Texas and I think
22 the case was brought in Texas. The judge literally shut
23 the case down for nine months and took an econometrics
24 course and then wrote into the law in his hearing on that
25 law how exactly you should process evidence in these

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1 statistical cases. So at least in that instance the
2 judge, you know, listened to what the experts were
3 saying. And it seemed a pretty Draconian procedure to
4 stop the case for nine months and take an econometrics
5 class but he did. And we talked about that. And there
6 were other cases like that.

7 So, yes, there may be standards in certain parts
8 of the law. But the question that that's not standard
9 statistics. At least I would ask at least to see why is
10 this part of the law exempt from the rules that are
11 uniform across science and across a body, even, of law.
12 It's not just something outside of law. We're talking
13 about law and economics and various types of discussions
14 referring to discrimination, for example, or affirmative
15 action cases.

16 Q. Sir, you edit journals in your field. Am I right?

17 A. Yes, I do. I'm the chief editor -- I'm a
18 co-editor, I'm sorry, of a journal. It's called the
19 Journal of Political Economy. It's one -- what's
20 sometimes considered one of the top five economics
21 journals, and I edit those. In fact, I'm delinquent in
22 some of my reports. But it is a definitely something I
23 do. I do a lot of refereeing and editing.

24 Q. And based on your editing experience, would
25 Dr. Peterson's or Dr. Rabinovitz's methodology meet the

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1 requirements for those types of journals that you provide
2 services?

3 A. It would be what the journal would call a desk
4 reject. They'd return it back to the author and say
5 we're not going to waste your time on processing it if it
6 doesn't meet the beginning. It's not like the standard
7 error was wrong because there's no standard error. And
8 so it's kind of wrong not to have a standard error. So I
9 believe it would be what was called in that particular
10 literature, that particular practice, a desk reject. So
11 you wouldn't waste his time, the author's time, and you
12 wouldn't waste the referee's time because you could see
13 that it was just not good.

14 Q. Mr. Guy asked Dr. Rabinovitz to tell the Court why
15 he should be comfortable accepting her forecasting number
16 in this case. Could you tell the Court whether he should
17 be comfortable accepting either Drs. Peterson's or
18 Rabinovitz's estimates in this case?

19 A. Well, again, I'm not a psychological counselor on
20 comfort. I can't say who should be comfortable or
21 shouldn't. I would simply raise the question of saying
22 look at the literature. Look at the discussion of the
23 law on economics. Look at the discussion of the law on
24 statistics literature which asks how evidence should be
25 processed in legal hearings, statistical evidence. And I

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1 would say drawing on that, I would have some doubts. I
2 would at least ask that they subject their analyses to
3 the kind of scrutiny that many other bodies of knowledge
4 are subject to. I don't see why asbestos should be
5 exempt from what I think is generally a practice across
6 many fields, many fields of science and not just
7 economics.

8 Q. No further questions, Your Honor. I pass the
9 witness.

10 THE COURT: Mr. Guy.

11 MR. GUY: Your Honor, may I cross-examine
12 Professor Heckman -- Dr. Heckman from here?

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MR. GUY:

16 Q. Now, Dr. Heckman, what's your billing rate?

17 A. My billing rate is \$2,300 an hour.

18 Q. We should have put you on at the beginning.

19 A. Why?

20 Q. Well we would have saved a fair amount of money.

21 A. I wasn't here for the whole case.

22 Q. Did you predict the housing bust?

23 A. That was discussed by many economists.

24 Q. No, sir. Did you predict the housing bust?

25 A. I was not working on housing.

Cross - Heckman

1 Q. So the answer would be no?

2 A. Many economists predicted that.

3 Q. Dr. Heckman?

4 A. Ned Gramlic at the University of Michigan, who is
5 on the federal housing board --

6 Q. Dr. Heckman, I don't want to cut you off, and I
7 don't want to be rude, but we only have an hour so.

8 THE COURT: Let's go to the next question.

9 B MR. GUY:

10 Q. Now you have a Nobel Prize; right?

11 A. Yes, I do.

12 Q. And Alfred Nobel didn't think economics was a
13 science, did he?

14 A. I don't believe Alfred Nobel ever offered an
15 opinion on the subject.

16 Q. Your Nobel Prize is from the Bank of Sweden;
17 correct?

18 A. No. It's from the Nobel Foundation if you look at
19 the website.

20 Q. And it was started in 1969?

21 A. It's the only Nobel Prize that was issued after
22 Nobel's death. That's correct.

23 Q. It's a very prestigious prize; of that, there's no
24 doubt.

25 A. It receives some recognition. Yes.

Cross - Heckman

1 Q. Now, your rate of \$2,300 an hour. Is that the
2 market rate for your services?

3 A. I do not do much of this activity, so I can't say
4 that I have a well established market.

5 Q. That's the price you charge to willing buyers such
6 as Coltech?

7 A. I don't know if you want to call it "willing
8 buyers." I would say the concept in economics that's
9 fundamental is called opportunity cost. I'm busily
10 engaged in many networks around the world. And the
11 question is when I do something like this, I try to be
12 informed. It's costly and it takes me away from some of
13 the other work and there --

14 Q. Dr. Heckman, that's your price. Yes or no?

15 MR. NEBRIG: If he's going to ask him that kind of
16 question, he should be allowed to answer.

17 THE COURT: You can answer.

18 THE WITNESS: I was saying right now I'm running
19 several networks around the world, editing journals,
20 interacting with students. This is not my way of life.
21 I'm not a professional witness. I have not -- so it's
22 costly. It's costly because it's a different style of
23 inquiry from what I do in my normal workday life.

24 BY MR. GUY:

25 Q. Move to strike, Your Honor. Nonresponsive.

Cross - Heckman

1 I'm not casting any pejorative value to the fact
2 you charge \$2,300 an hour, sir. I want to determine that
3 that's the price you charge in the market. Correct? It
4 is correct?

5 A. Yes.

6 Q. You're an academic; right?

7 A. Yes, I am.

8 Q. And you know that economists are sometimes
9 criticized because they make unrealistic assumptions;
10 right?

11 A. By some people who sometimes don't understand
12 those assumptions. Yes.

13 Q. Because economists are operating in a theoretical
14 world; right?

15 A. Some economists do. That's not characterizing me.

16 Q. I understand. Now we have to operate in the real
17 world here. Okay?

18 A. So do I.

19 Q. Let me look at some of your articles that you've
20 written. And you can tell me if they're indicative of
21 the work that you do in the theoretical world. If we
22 could pull up Dr. Heckman's CV and go to number 11.
23 That's an example of one of your articles; correct?

24 A. Yes, it is.

25 Q. Go to the next one, 33. Another one? "Incidental

Cross - Heckman

1 Parameters Problem And The Problem Of Initial Conditions
2 In Estimating A Discrete Time-Discrete Data Stochastic
3 Process And Some Monte Carlo Evidence?"

4 A. Yes.

5 Q. Go to another one, 66. Alternate Methods For
6 Solving The Problem Of Selection Bias In Evaluating The
7 Impact Of Treatments On Outcomes. Now, "selection bias,"
8 that's something that occurs in statistics. Right?

9 A. Yes. And it's what the Nobel Prize committee
10 awarded my work on that topic.

11 Q. Okay. The next one, and I think this is the last
12 one, 270. These articles are indicative of the work you
13 do. This one is called "Nonparametric Identification Of
14 Nonadditive Hedonic Models." Do you see that?

15 A. I see that. But I don't accept your previous
16 statement that these are indicative of all that I do.
17 You're sampling a very small subset of the 300 papers.
18 Why don't you turn on the papers on estimating the effect
19 of the GED or the Perry Preschool program and the fact of
20 improving the status of African-American children? Or
21 the effect of tuition policy on employment of
22 African-Americans? I would suggest you do that. Could I
23 look at my vitae and also pick out some papers?

24 Q. Dr. Heckman, I didn't want to hit a raw nerve
25 here. I was just picking up some examples.

Cross - Heckman

1 A. It's obviously selective what you're doing. Yes,
2 I do theoretical papers and that's part of my science.
3 That's part of my knowledge. I do a number of other
4 papers as well.

5 Q. Let's focus on what you don't do. Have you ever
6 done an estimate of asbestos claims?

7 A. I've done plenty of estimates of forecasts --

8 Q. No. Have you ever done estimates of asbestos
9 claims in any court? Yes or no.

10 A. I said earlier in my testimony answering the
11 direct statement that I have not worked directly in
12 making asbestos forecasts but the principles were general
13 across many different areas of knowledge. So there's not
14 a new statistics for asbestos; that's what I'm trying to
15 say.

16 Q. I understand. Now Dr. Heckman, you've never
17 settled an asbestos case, have you?

18 A. You mean as a judge?

19 Q. As anyone. You have no experience settling
20 asbestos cases.

21 A. I gave testimony in another case involving W.R.
22 Grace a few years ago.

23 Q. No, sir. My question is whether you personally
24 have settled an asbestos case.

25 A. I'm not quite sure what you mean by "settled."

Cross - Heckman

1 Q. You represent a plaintiff and you settle the case.

2 THE COURT: We'll take his answer as no.

3 MR. GUY: Thank you, Your Honor.

4 BY MR. GUY:

5 Q. Now you are not sitting in that chair today to
6 give Judge Hodges an estimate of Garlock's asbestos
7 liabilities, are you?

8 A. I'm here to give an estimate of an estimate.

9 Q. You're not here today to give Judge Hodges an
10 estimate of asbestos liabilities, are you?

11 A. No.

12 Q. Now you criticize Dr. Rabinovitz and Dr. Bates;
13 correct? Dr. Peterson; correct?

14 A. You heard what I said. Yes.

15 Q. You're not offering an opinion to Judge Hodges at
16 all, and you weren't asked to offer an opinion, and no
17 opinion was elicited from you on direct examination
18 concerning the report that Dr. Bates did; correct?

19 A. Not on the direct testimony. No.

20 Q. So what we're left with is your criticism of two
21 reports. And the Judge has no knowledge whatsoever as to
22 your very informed and clearly brilliant opinions as to
23 statistical issues; correct?

24 A. Yes.

25 Q. Now, you do understand that the reports that were

Cross - Heckman

1 prepared by Drs. Peterson and Dr. Rabinovitz are based
2 upon observable data; right?

3 A. You mentioned Dr. Bates. All three are based on
4 observable data.

5 Q. I'm not talking about Dr. Bates' report because
6 you're not offering an opinion about Dr. Bates' report.

7 A. You mentioned it. That's all.

8 Q. You understand that the two reports of
9 Dr. Peterson and Dr. Rabinovitz are based upon observable
10 data; right?

11 A. They offer data. Yes.

12 Q. And are you aware that the debtors have
13 characterized the database that they relied upon as being
14 robust and reliable?

15 A. I've seen some discussions. Yes.

16 Q. Are you aware that they rely on inflation rates
17 that are provided by the Congressional Budget Office?

18 A. I've seen that. I've also seen --

19 Q. You're not taking the Congressional Budget Office
20 to task for its work, are you?

21 A. In other work I actually have, but that's not
22 relevant in this case.

23 Q. So we shouldn't be relying on the Congressional
24 Budget Office?

25 A. No. I think there's work by OMB that offers a

Cross - Heckman

1 dissenting point of view. That's all I'm saying.

2 Q. And I might agree with you on that. But on
3 inflation rates, are they a reliable source on inflation
4 rates?

5 A. I didn't offer an opinion on that and I don't feel
6 I should.

7 Q. And you're not offering an opinion as to whether
8 the discount rates that are drawn from Treasury yields
9 are unreliable, are you?

10 A. Not in my report.

11 Q. And you're not offering an opinion as to whether
12 the Nicholson methodology is a reliable and accepted
13 source and methodology for predicting Mesothelioma claims
14 and deaths, are you?

15 A. No.

16 Q. Now, as I understand your testimony, you're not
17 saying that Dr. Peterson's number's wrong; right?

18 A. I said I didn't know the truth. I'm not God.

19 Q. Right. So it could be bigger.

20 A. Could be smaller.

21 Q. Right. You just don't know.

22 A. Nor does he.

23 Q. And the same is true of Dr. Bates --
24 Dr. Rabinovitz; right?

25 A. Correct.

Cross - Heckman

1 Q. Correct?

2 A. Yes.

3 Q. So the judge, from your testimony, has no number
4 that he can rely upon. And from your testimony, he can't
5 even be told whether the numbers that have been presented
6 to him by Drs. Peterson and Rabinovitz are wrong.

7 A. You're confusing a concept of wrong and reliable.

8 Q. I understand. But that's your testimony; correct?

9 A. No. I talked about reliability. I didn't say
10 whether I think they were wrong. I said I wasn't God.

11 Q. Dr. Heckman, the numbers could be undere-stimates
12 couldn't they?

13 A. They could be underestimates; they could be
14 overestimates.

15 Q. Thank you. Now I want you to tell me if you think
16 the following factors would be relevant in trying to
17 predict a verdict in a Mesothelioma case. Okay? Company
18 solvency. Is that a relevant factor?

19 MR. NEBRIG: Objection. Outside the scope, Your
20 Honor.

21 MR. GUY: Your Honor, it's from his report.

22 THE COURT: Well, let him answer if he can.

23 BY MR. GUY:

24 Q. Do you need to look at your report, sir?

25 A. Yes. Actually, if you could point to my report I

Cross - Heckman

1 would be --

2 Q. If you turn to paragraphs 16 and 17.

3 A. I'm sorry. Which page?

4 Q. Page nine and ten.

5 A. Page nine and ten? Okay.

6 Q. If you look at the bottom of paragraph 16 it
7 starts, "These choices are influenced by," and it goes
8 on. "Key factors that likely influence the economic
9 deterrence associated with filing and settling claims.
10 These factors include the value of expected settlement
11 payouts, company solvency and medical documentation." Do
12 you see that?

13 A. Yes. But can I qualify the answer?

14 Q. If you'd like.

15 A. Just to clarify. You're using that particular
16 quote. I'm drawing on a general statement, accurate
17 models of behavior. So if you could highlight the
18 beginning of the paragraph, I'd appreciate it.

19 Q. If we have time, you can do that on redirect. I
20 just want to know whether you agree with the statement in
21 your report.

22 A. I want to put it in context if I could, please.

23 Q. Let's just try this, sir. Do you agree that those
24 factors will likely influence the economic returns
25 associated with filing and settling claims?

Cross - Heckman

1 A. Filing or settling claims at a general level.

2 Yes.

3 Q. Now let's go to the next paragraph. Each of these
4 additional factors, in turn, will depend on a number of
5 further factors, can depend on such factors as the
6 claimant's disease. Do you see that?

7 A. Yes.

8 Q. Age. Do you see that?

9 A. Mm-hmm. ("Yes.")

10 Q. Evidence of exposure, set of products,
11 availability of funds from other firms and trusts
12 involved with asbestos products, availability of
13 insurance funds, venue, conduct of the defendant, laws
14 governing the claim, plaintiff's expectations. Do you
15 see all of those things?

16 A. Yes, I do.

17 Q. So are those the sort of things that, to put it in
18 economic principles, a buyer and seller consider when
19 they're fixing the price, the merits, of an asbestos
20 claim?

21 A. If you look at the incentives of individuals as
22 they decide to bring claims, to execute a large body of
23 work and law on economics and, in law, essentially would
24 look at factors that would affect the incentives on both
25 sides of the case. I'm giving you an example of these

Cross - Heckman

1 things. You'll notice it says, "for example." These are
2 examples of general principles from law and economics
3 from principles that have been established by going back
4 40 years in law and economics to work by Posner, Landis;
5 more recently by Babchuck and others.

6 Q. Dr. Heckman, I know that you don't have firsthand
7 experience with asbestos, and I know that you're not
8 giving the judge an estimate and you're not telling us
9 whether Dr. Peterson's and Dr. Rabinovitz's numbers are
10 wrong. But what I'm asking you, as a Nobel Laureate who
11 charges \$2,300 an hour is, can you tell the Court if
12 plaintiffs and defendants consider those factors, yes or
13 no, when they resolve asbestos cases?

14 MR. NEBRIG: Objection. Asked and answered.

15 THE COURT: Overruled. You may answer it if you
16 can.

17 THE WITNESS: Any of those factors? I've seen
18 some estimates suggesting age, for example.

19 BY MR. GUY:

20 Q. Not estimates. I'm asking you if you've got a
21 plaintiff and you've got a defendant and they're
22 resolving an asbestos claim whether, in your view, as a
23 hypothetical theoretical matter, because you don't have
24 firsthand experience, whether in your view they would
25 consider those sorts of factors. Those factors, you

Cross - Heckman

1 listed them in your report.

2 A. I would say from the economics of law and the
3 economics analysis from basic economic analysis about
4 incentives, I'm giving a list of incentives of
5 individuals to bring cases. This is something that's
6 widely agreed on in the literature, those kind of
7 factors. These are the benefits and the costs on both
8 sides.

9 Q. So that's the merits of the claim; right? That's
10 the price; right?

11 A. You're using a term I'm not sure I could really
12 respond to what you mean by the "merits of the claim."

13 Q. That's not an economic term?

14 A. Well, it's a general term.

15 Q. But you understand price. That's an economic
16 term, isn't it?

17 A. I understand costs and price, yes; benefits and
18 costs.

19 Q. Is it fair to say from your extensive articles,
20 your huge expertise, that you believe that plaintiffs and
21 defendants look at those factors in fixing the price of
22 asbestos claims?

23 A. I'm an empirical economist. And what I would say,
24 if you're asking my personal opinion, and I understand
25 you're asking my personal opinion.

Cross - Heckman

1 Q. I'm asking your expert opinion.

2 A. I am giving you my expert opinion as an empirical
3 economist. I would consider those as possibilities. A
4 thorough empirical analysis would investigate in looking
5 at claiming behavior and looking at trends of claiming
6 behavior so that as a matter of fact, and based on
7 everything I've done in economics, I would consider those
8 as possibilities. I would not, because I'm not a purely
9 theoretical economist, announce those as God-given or
10 somehow determined in fact. I would say it's something
11 to determine from the data.

12 Q. So if you were constructing a model that would
13 satisfy you so that you would come into the Court and
14 say, this is reliable, Your Honor. This model is
15 reliable. Trust me. I know it's theoretical. I know
16 it's hypothetical. It's not real world, but it's a good
17 model. You would consider at least those variables;
18 right?

19 A. I wouldn't state it that way. I mean, so I'm not
20 going to answer that question because it's not even the
21 way I would frame the question. I said I would look at
22 these as potential candidates. I might look at other
23 things as potential candidates. Any competent empirical
24 analyst would consider the determinates, especially if
25 you're considering a world in which change and

Cross - Heckman

1 environment may happen. But various conditions may
2 happen. That the claimants may age. That the venues may
3 change. That the incentives and the environment may
4 change. And unless that's done -- so I would say yes,
5 you would start with that, but I'm not going to end with
6 that. I'm not a theorist. And I'm not going to announce
7 it because I thought of it last night as true. It's got
8 to be subject to the data by rigorous statistical tests
9 that I haven't seen by Peterson or by Rabinovitz. Okay?
10 That's what I said earlier. You're putting words in my
11 mouth that I simply don't accept.

12 Q. Any competent empirical analysis, those would be
13 your words, would at least start with those factors?

14 A. Those are a plausible list of factors. Others may
15 disagree with me. That's the whole point of science:
16 You have disagreement, you lay out your hypotheses, you
17 lay out your data and you reject them. This is a key
18 part of the scientific method. You don't just say I
19 picked up some method because some judge told me
20 somewhere that this is what you're supposed to do. I
21 think what you ask is, why did I arrive at these
22 principles because on what basis? And so that's what the
23 law is in the economics community, and that's what
24 science is all about.

25 Q. Dr. Heckman, you're a statistician; right?

Cross - Heckman

1 A. Well I'm a fellow of the American Statistical
2 Society. I don't know if that qualifies me. I was in
3 the Statistics Department for two years at Yale
4 University.

5 Q. I think that qualifies you. If you had a sample
6 of 24 -- I want you to just assume for me you have a
7 sample of 24 somethings.

8 A. Yes.

9 Q. And then you have another sample of 26,000
10 somethings. Which sample is the better sample?

11 A. Counting number of observations per se, you could
12 only answer that question if everything else were the
13 same. 26,000 is obviously better than the 24 of the same
14 kind of variable. You realize that decisions about
15 adoption of drugs are sometimes made on samples as small
16 as 12 and 13, and that cancer treatments and another
17 number of other cases are made in psychology and
18 pharmacology across the field.

19 It's not a question of the number of observations.
20 It's the quality of observations and what's being said.
21 One fact can sometimes be enough. I mean, literally
22 finding that one ellipse of the sun in 1919 verified the
23 general theory of relativity, and that was a major
24 triumph for Einstein's procedure. So you can't say one
25 observation isn't enough. There's sometimes a critical

Cross - Heckman

1 observation. 26 million observations that are flawed and
2 measured with error are not better than 23 observations
3 that are measured with precision and actually are done
4 carefully by laboratory experiments and so forth. So the
5 comparison you're making is meaningless.

6 Q. Now, you do know that Dr. Bates prepared financial
7 estimates for the debtors; correct? You know that.

8 A. I cite Dr. Bates in my report. I'm happy to refer
9 to that aspect of my report.

10 Q. I'm just asking you whether you're aware. I don't
11 want to get into Dr. Bates' report because you're not
12 offering an opinion as to that. What I'm asking you is
13 whether you are aware that Dr. Bates prepared financial
14 estimates for the purposes of SEC filings for EnPro
15 forecasting Garlock's asbestos liabilities. Are you
16 aware?

17 A. I'm aware that he did this for a different
18 purpose, yes, than for this litigation. So Dr. Bates has
19 done many things. He's also written some theoretical
20 papers in econometrics you might want to display.

21 Q. I know you're not expressing an opinion as to
22 Dr. Bates' report, but we've heard in court, and I know
23 you've heard, that he believes the number, the right
24 number that the judge should accept as being reliable and
25 reasonable, is something less than \$125 million. Do you

Cross - Heckman

1 remember that? If you don't know, sir, that's okay.

2 A. Again, I think you're confusing two separate
3 issues.

4 Q. Dr. Heckman, do you know one way or another?

5 A. Dr. Bates answered one question, and the other
6 question refers to a different question. So you're
7 comparing apples and oranges.

8 Q. No. I'm not there yet, sir.

9 A. Well, I am. So the point that you're making is
10 really irrelevant. You're asking if Dr. Bates decided he
11 wanted to answer whether or not the color of the tree
12 across the street was brown and then another question is
13 Dr. Bates wanted to answer whether oranges are orange-
14 colored. Those are two different questions.

15 Q. Your Honor, I have no further questions.

16 THE COURT: All right.

17 MR. WEHNER: No further questions, Your Honor.

18 THE COURT: You don't want to take a chance at it?

19 (Laughter.)

20 MR. WEHNER: No, Your Honor. I think we know what
21 color the leaves are out there.

22 THE COURT: Thank you, Dr. Heckman.

23 THE WITNESS: Thank you.

24 (Witness excused at 4:42 p.m.)

25 MR. NEBRIG: Judge, real quick, just housekeeping

1 on Dr. Heckman. We would like to offer his CV for
2 substantive purposes and his report for Rule 104 and the
3 other purposes under prior experts.

4 THE COURT: We will accept that.

5 MR. WEHNER: Subject to our standing objection.

6 THE COURT: Why don't we come back Monday? I
7 don't think there's much else we can accomplish today.

8 MR. GUY: So, Your Honor, we're starting with
9 Dr. Rabinovitz?

10 THE COURT: We'll start with Dr. Rabinovitz on
11 Monday and let her go home after that.

12 MR. GUY: Thank you, Your Honor.

13 THE COURT: Okay. Thank you-all. We'll see you.
14 Let's just say at -- is 9 o'clock Monday morning okay?

15 MR. GUY: Yes, Your Honor.

16 MR. WEHNER: Thank you, Your Honor.

17 THE COURT: We'll see you at 9 o'clock on Monday.

18 (Off the record at 4:43 p.m.)
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CERTIFICATE

I, Tracy Rae Dunlap, RMR, CRR, an Official Court Reporter for the United States District Court for the Western District of North Carolina, do hereby certify that I transcribed, by machine shorthand, the proceedings had in the case of IN RE: GARLOCK SEALING TECHNOLOGIES, LLC, et al, Bankruptcy Case No. 10-BK-31607, on August 9, 2013.

In witness whereof, I have hereto subscribed my name, this 11th day of August 2013.

__/S/__Tracy Rae Dunlap___
TRACY RAE DUNLAP, RMR, CRR
OFFICIAL COURT REPORTER